

for the most part they seem to have been founded on false prospectuses, and not on reports to the shareholders—a distinction which has given rise to some discussion; and which I need not further notice at this moment. Then we have our own Banking Act, and our Civil Code establishing a general principle of liability, of which I will not stop now to discuss the limitations, because I gathered from what the defendants' counsel said that he conceded the general principle, or rather a general principle, though he by no means conceded any violation of it in the present instance. The first thing therefore will be to see exactly what are the precise misrepresentations and frauds charged. The misrepresentations charged against the defendants are those said to be contained in the annual statement of the 30th of June, 1872, in reliance on which the Plaintiff says he purchased his shares. This statement was submitted to the shareholders at the annual general meeting, on the 2nd of July of the same year. The plaintiff purchased on the 24th of July, at a premium of $5\frac{1}{2}$ per cent., which, he says, the stock would have been well worth, if the statements of the directors had been true. The plaintiff then goes on to specify the precise things that were said in this statement of the directors, and in what respects they were untrue and likely to deceive him. He says, first of all, it asserted that the capital stock paid up was \$636,200; and he insists that in this particular it was false, inasmuch as a considerable portion of the capital said to be paid up was only colorably paid up by collusion among the defendants, and not intended to be paid up at all. The report was as follows: "The directors of the Metropolitan Bank submit to the shareholders their first report embodying the balance sheet, and statement of profit and losses, for the year ending 30th June, 1872. The Bank commenced business nominally in July last; but it was only towards the end of August that it was able to do so actively. The various calls have been punctually met, and many shares have been paid in full. The average capital during the year has, notwithstanding, been only \$420,000, so that the result will, it is hoped, be satisfactory, and justifies the expectation that with the larger paid up capital of \$636,200, still greater profits will be realized. It is not the intention of the directors to make any new calls at

present, though the option will be given to the shareholders, as heretofore, to pay up in full. It was deemed expedient a few weeks ago to commence the issue of notes, and the circulation has now reached \$79,848. After dividing eight per cent on the paid up capital, the sum of \$15,000 has been carried to a rest, leaving a balance at the credit of profit and loss of \$4,652.69. The probable further advance in the value of real estate, and the difficulty likely to arise in procuring suitable sites for banking purposes, have induced your directors to purchase the premises now occupied by the Bank at a price upon which an advance can already be got."

The declaration then goes on to say that Mr. Starnes, the President, further stated that the paid-up capital was \$636,200, and the average capital from the July previous up to the time of the report was \$420,000, and the profits for the year ending June, 1872, were \$55,277.39. The next allegation is one that might have had very great importance, if it could be referred to any particular point of time; it is this: "The plaintiff further alleges that notwithstanding the provisions of the act respecting banks and banking, the said directors have collusively and fraudulently loaned to each other for speculative purposes large sums of money belonging to the said Bank upon collusive and fictitious security, and to more than double the amount which, by virtue of the said statute, the said directors could lawfully borrow from the said bank, and a large portion of the indebtedness so incurred is still unpaid by the defendants." I say this allegation would be of importance if it referred to any precise time. If it charged, for instance, that before the plaintiff became a stockholder at all, the defendants had unlawfully used vast sums of the funds of the Bank, and that the plaintiff misled by their concealing the fact, had bought, and suffered in consequence, the relation between the concealment of the fact, and the plaintiff's purchase and loss might have directly borne on the question of their responsibility; and more than that, there might have been a direct relation between that fact and the mode of payment of the calls; but if, on the contrary, this allegation is intended to refer to their misapplication of the funds after the plaintiff's purchase of shares, not only could there, on that score, have been no concealment of it possible at the time of the purchase; but the differ-