

Lords Atkinson, Shaw, Moulton.]

[13 D.L.R. 761.

McMILLAN v. STAVERT.

1. *Bills and notes—Illegal consideration—Bank trafficking in its own shares.*

Promissory notes given to a bank by certain of its directors are not invalidated as for an illegal consideration by reason of the fact that they were given for the purpose of recouping to the bank, moneys which had been unlawfully and without the authority of its shareholders employed in the purchase of the bank's shares in furtherance of a scheme whereby the bank's funds were used in trafficking in its own shares to support the price quotations of same on the stock market. *Staver v. McMillan* (1911), 24 O.L.R. 456, 3 O.W.N. 6, affirmed on appeal.

2. *Banks—Liability of directors—Breach of trust.*

Where, in breach of trust and without the authority of any resolution of the board of directors or other corporate act of a chartered bank, funds of the bank were used by its manager, in connivance with one or more of the directors, to make purchases of bank shares in the names of brokers and others who were allowed to overdraw their accounts with the bank to make the purchases, knowing that the bank was prohibited by statute from purchasing or dealing in its own shares, the duty of the other directors, on ascertaining that such breach of trust had been committed, was to repudiate the transactions and insist on the restoration to the bank of the funds illegally diverted; in such event there could be no claim to indemnity against the bank on the part of such nominal purchasers even if the bank asserted a lien on the shares for the overdrafts while repudiating the purchases; nor can any claim for indemnity against the bank arise in favour of the directors who, after the illegal diversion of funds had occurred, attempted to rectify the same by an adjustment, whereby promissory notes of the directors were given to the bank to recoup it for the money unlawfully diverted, although the recoupment represented the price of the shares illegally purchased.

Stavert v. McMillan (1911), 24 O.L.R. 456, 3 O.W.N. 6, affirmed on appeal.

Sir Robert Findlay, K.C., and D. L. McCarthy, K.C., for appellants McMillan. S. O. Buckmaster, K.C., and R. H. Roope Reeves, for respondent Stavert. Macoun, for third party.