

Notwithstanding this, a company may by its conduct preclude itself from asserting that stock is not paid-up. The common law doctrine of estoppel applies to its transactions, and this estoppel will bind the liquidator, as he cannot assert any greater right than the company: *Bloomenthal v. Ford*, [1897] A.C. 156.

But no holder of shares can invoke this doctrine unless all the elements of estoppel exist. He must have relied upon the statement of the company that the shares are paid-up and must have had knowledge of the truth. This is where *Hisey* fails. He was a director of the company, and knew of the terms of the agreement, and knew the land had not been conveyed. He knew the stock was not in fact paid-up, yet he seconded the resolution directing the allotment and issue of this stock to himself and others as fully paid-up.

He should have credit for honesty in all this. He expected the land company to live up to its contract, but he knew at this time that the land had not been conveyed. So that there was nothing yet due to set off against the liability upon this stock.

Had *Hisey* any right to be relieved from the situation he had thus created, he might have brought an action claiming the cancellation of his stock-holding, upon the theory that what was done was based upon mistake or fraud, and that he never really intended to assume this stock and its incidental liability for \$20,000; but such action, to be effective, must have been taken before the liquidation began. The liquidation crystallised the situation, and it was now too late: *In re General Railway Syndicate*, [1899] 1 Ch. 770.

This does not in any way infringe upon the principle that the contract between a shareholder and the company is the measure of his liability. If a man agrees to exchange land for shares, and this is not *ultra vires*, and the contract is carried out, he is a paid-up shareholder. If the contract is not carried out, he is not a shareholder, and cannot be sued for calls, though he may be liable on his contract to sell land: *Re Modern House Manufacturing Co.* (1913), 28 O.L.R. 237, 29 O.L.R. 266.

Appeal dismissed with costs.