MIDDLETON, J.:— . . . Three distinct questions arise. First, it is said that Meek is liable in respect of seventy-five shares, parcel of the original subscription; secondly, that he is liable in respect of a further subscription of one hundred shares; thirdly, that he is liable in respect of certain moneys charged to him in the books of the company, of which he was at the time general manager.

Dealing with these in order—Meek subscribed for the 75 shares. He gave his promissory note for this amount, payable to the company. The company transferred the note to another company, known as the Stewart, Howe & May Company, and this company claims to be the holder of it.

I think the note is payment for the stock, and that the referee was right in refusing to place Meek on the list of contributories in respect thereof.

The agreement entered into at the time of the organization of the company appears to be intelligible, and there is some ground for supposing that the facts connected with the organization of the company and the transfer of the note have not been adequately investigated. It may be that the officers of the company are liable for misfeasance in parting with this note, and it may be that the transfer of the note can be attacked. The liquidator has not attempted to assert liability on the part of Meek for misfeasance, except in respect of the one matter hereinafter mentioned; and the order should be modified so as to make it clear that the claim made against Meek for misfeasance, and which was dismissed by the referee, is the only claim for misfeasance as yet adjudicated upon, and that the dismissal is without prejudice to any other claim open to the liquidator to make.

The second claim referred to arises out of a totally different set of circumstances. The company was originally incorporated with a capital of one hundred thousand dollars. An increase of the capital to $150,000 was afterwards desired. The amount of stock subscribed was less than ninety per cent. of the original capital. By the Companies Act, 7 Edw. VII. ch. 34, sec. 13, subsec. (a), it is provided "that the capital of a company shall not be increased until ninety per centum thereof has been subscribed and ten per centum paid thereon."

The stock that had already been subscribed in this company, —except the 75 shares subscribed by Meek—had been paid for by the transfer of business assets from the Stewart, Howe & May Co., to the Stewart, Howe & Meek Co., and Meek had paid for his 75 shares by his note, which had been transferred