tiffs; and had never, after notice of the fraud, recognized any rights or liability in him and had never received and would not receive any benefit whatever from the shares; and within a reasonable time after notice of the fraud, and before he had received any benefit for or in respect of the shares, he had repudiated and disclaimed the shares, and all title thereto, and all liability in respect thereof, and gave notice of his repudiation and disclaimer to the plaintiffs.

Demurrer and joinder.

Morgan Lloyd, in support of the demurrer — The plea does not show enough to constitute a defence as long as the defendant continues a shareholder, and on the register as such. This plea does not show that he has ceased to be a shareholder or has caused his name to be removed from the register: *Deposit and General Life Assurance Company* v. *Ayscough*, 4 W. R. 617, 6 E. & B. 761. And the later cases in equity clearly showed that under such circumstances as the record discloses the person whose name is on the register is liable to contribute as a shareholder: *Duranty's case*, 7 W. R. 70. 26 Beav. 268; *Central Railway Company of Venezuela Kisch*, 15 W. R. 821; 2 L. R. H. L. 99; *Oakes and Peeks case*, 15 W. R. 397, 3 L. R. Eq. 576.

R. E. Turner, contra—The sole question is whether this is a good plea at law as between these parties. We have nothing to do with any supposed equitable rights of creditors, or with what might happen in case of the winding up of the company. The plea shows that the contract sued upon was voidable for fraud, and that the defendant avoided it. The case of the *Deposit and General Life Assurance Company* v. *Ayscough* is really in my favour. The plea in that case was held bad on the precise ground that it wanted the allegations which this plea contains.

M. Lloyd replied. *Cur. adv. vult.*

BRAMWELL, B., now delivered the judgment of the Court.* The question in this case, as Mr. Turner in his excellent argument said, arises in a common law action in a Common law Court, and is to be decided on common law consideration. The plaintiffs case is founded on contract. There is no duty on the defendant except what he has undertaken, and whether he is an original allottee or whether he is a transferee who has been accepted by the plaintiffs as a shareholder, the case is the same. If the defendant is liable, it is because he has undertaken the duties of a shareholder in consideration of the plaintiffs giving him the benefit of one. Now it is a rule that a contract is voidable at the option of the person who has entered into it, if he has entered into it through the fraud of the other party, and has repudiated it on the discovery of the fraud. This includes giving up all benefit from it, and restoring the other party to the same condition as before as far as possible. Now the plea alleges all these facts, fraud, prompt repudiation, and restitution, as far as possible. It must be good therefore at common law, and so we hold. Cases in equity under the winding-up Acts have been cited on them; we express no opinion save that they do not govern this case. It may be this defendant is liable under the winding-up Acts, or that he can otherwise in equity be made liable to creditors. No question of that sort arises here; there is no replication, legal or equitable, that the plaintiffs are living as trustees for creditors or anyone else. There may be no creditors, and the action may be brought (we are far from saying it is) merely to indemnify those who have committed the fraud the defendant alleges. But we cannot help observing that creditors trust those who are liable as shareholders, those against whom the company is entitled to enforce the duty of shareholders. If the defendant had got on the register through forgery of his name he would not be liable, though as much trusted by creditors as now; see per Turner, L. J., *Ship's case*, 13 W. R 599, 2 D. J. & S. 544. But with this we have nothing to do; we have to decide a common law question. The authorities at common law are in the defendant's favour, and the ruling of Willes, J., at Guildford, in *The Glamorgan Iron Company* v. *Irvine*, at the Surrey Summer Assizes, 1866, is in point. Our judgment is for the defendant.

Judyment for the defendant.

* Kelly, C.B., Martin, Bramwell, and Channel, B.B.

CORRESPONDENCE.

The Question of Costs in the Division Courts.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

GENTLEMEN,—It is to be regretted that those persons who think it their duty to the public to criticise the Division Courts and their officers, could not be induced to confine themselves to the candid statement of facts, without the exaggerations which, it seems to me, they uniformly indulge.

Your correspondent "Communicator" is evidently a gentleman of some education and culture—probably a lawyer—belonging, therefore, to a class from whom the public have a right to expect enlightened and comprehensive views, and fair and candid statements on all questions of public interest which furnish occasion for a variety of opinions. It cannot be claimed that his recent communications in your journal in any sense answer these expectations, but, on the contrary, like most of the newspaper attacks upon Division Court Clerks and Bailiffs, they abound in exaggerations. I do not intend to review these letters at length, but only to call the attention of your readers to a single instance, as a specimen of the spirit and *animus* of the whole.

In your July number he stated that in the Division Courts it was not *unusual* (I think this was the phrase—the number is not before me,) to run up a bill of costs for twenty dollars upon a suit for the same amount; and in your last number (October) he reasserts this