

covered by the defendant in the action in which it was pleaded; and that now under Rule 127 a set-off for unliquidated damages may be pleaded by way of counterclaim. He concludes, "Consequently I think the legislature intended the shareholder to have the right to set-off even claims sounding in damages," which appears to be a distinct confession, that notwithstanding he had struck out the counterclaim at the trial, on further consideration he had come to the conclusion that it might be well pleaded as a defence pro tanto. He then proceeds to discuss the counterclaim on the merits and concludes that on its merits it could not be maintained. The result would therefore appear to be that his striking out the counterclaim at the trial on technical grounds, was erroneous, because a pleading containing substantial matter of defence ought clearly not to be struck out because the pleader chooses to call it a counterclaim where it is really a defence; but inasmuch as the plaintiff's claim failed, the striking out of the counterclaim was immaterial, because in no event could a defendant in such a case have judgment for it or for any excess over the plaintiff's claim against the defendant, the only party liable therefor being the company.

CORPORATIONS PURCHASING SHARES OF THEIR OWN STOCK.

In view of the recent case of *Stavert v. McMillan*, 21 O.L.R. 245, it becomes important to consider what is the effect of a bank or other corporation acquiring directly or indirectly shares of its own stock. In the case in question, the manager of a bank in order to keep up its credit on the market, without the knowledge of the directors, applied \$400,000 of the bank's money in the purchase of shares of its own stock, the shares thus purchased being transferred to various nominees for the bank. The directors on being made aware of the transaction got some of their friends to give promissory notes payable on demand for various amounts of the stock so purchased, which were transferred to them, on the assurance that they would not be called on