

titled, on payment of said balance, to a re-transfer of his said stock, and for general relief.

The defendant, in answering that part of the bill which speaks of the merger and reduction of the capital stock of the Company, by the transfer to it of the complainant's stock, says the transfer "had the effect, by operation of law, to merge, extinguish, and annihilate so much of the capital stock of the respondent, and practically to reduce it from an amount of \$108,206 83, at which it stood before the transfer, to the amount of \$98,574 51, being a reduction to the extent of \$9,632 32."

Both parties, therefore, speak of the transfer as effecting a merger of the stock transferred; but they differ in this, that the complainant insists, that the stock merged may be re-created, or resuscitated, by the decree of this Court, directing the defendant to make a re-transfer to the complainant. Whilst the defendant maintains, that the stock was absolutely annihilated by the transfer to the Company, the transfer enuring to the benefit not of the defendant in its corporate capacity, but to the benefit of the respective proprietors of shares in their natural capacities.

Before expressing an opinion upon the power of this Court to resuscitate this stock, or on the propriety of exerting the power, if it exists, it may be well to dispose of an objection, founded upon the order of the 22d of November, 1848, by which it is supposed this question was adjudicated.

In the opinion, and also in the introduction to the order, it was declared that the charge of fraud in fact, in procuring the settlement of the 1st of June, 1844, was not sustained by the proof. And it was thereupon ordered, "that said settlement should stand and be established;" but liberty was given to the complainant to surcharge and falsify the accounts, upon which the settlement was founded, in certain particulars therein specified. The settlement of the 1st of June, 1844, by which the amount supposed to be due from the complainant to the defendant was ascertained, not being obnoxious to the imputation of fraud in fact, it was adjudged that it should stand until the