

corporation was limited to \$150,000, but by a supplement, passed in 1825, ch. 169, it was enlarged to \$300,000, a sum far exceeding the actually subscribed capital now or ever existing. If, therefore, the shares of stock transferred by the complainant to the Company cannot be called back, why may not the defendant be required to issue new shares to the same amount, if that course should be deemed necessary to do justice between the parties? The amount of the capital would still be largely within the limits of the charter. I can see no objection to this course, provided the circumstances of the present case call for that kind of relief.

Cases are abundant to show, that if a deed is executed under suspicious circumstances, or is merely constructively fraudulent, this Court may, and should, permit it to stand as a security and indemnity to the grantee. It is not to be set aside absolutely, as would be done if found to be fraudulent in fact; but this Court, unlike a Court of Law, which can take no middle course, and must pronounce one way or the other upon the validity of the deed, may adopt the milder and more equitable course, and suffer it to stand, not as an absolute conveyance, but simply as a security for the sum really due.

In this case it has been several times said, and is repeated, that there is no foundation whatever for the charge of fraud, in fact, against any of the parties to the transaction in question. But still, the judgment of the Court was, and that judgment has been approved by the Court of Appeals, that the settlement of June, 1844, by which the sum supposed to be due from the complainant to the defendant was ascertained, was, in the contemplation of a Court of Equity, constructively fraudulent, and there can be no doubt that the transfer of the complainant's stock to the defendant was made because—and only because—of that supposed indebtedness. The agreement and transfer signed by the parties conclusively prove this. A purchase and sale of this stock was not intended, but a transfer in payment of a supposed pre-existing debt.

Assuming that the Court has the power to direct a re-transfer of this stock to the complainant, or to order new