

and were among other things authorized to make sale of stock, which before that time had been forfeited, and to contract for engines, and cars to be furnished as soon as they were required: that upon their return, they reported to the board that they had agreed with Mr. Norris for the purchase of engines, and with R. Imlay for cars, to be furnished when required, that Norris was to receive 100 shares, and Imlay 50 shares, and that the instalments on these shares should be considered payments to the extent of said instalments on account of the articles to be furnished by them respectively; that the company under this agreement became indebted to them to the extent of the instalments as they became due; that the stock was taken at its par value: and that under the agreement, the company regarded itself indebted to them to the extent of the instalments as they should become due; and being so indebted the directors allowed their stock to be paid in that way, believing it both legal and proper under the resolution of the last session, to receive the payments on the stock of the company, in the debts of the company. Such are the facts before the committee material to this branch of the subject. Do they disclose a contract which the corporation had a legal right to make? That will not be denied, for the power to purchase engines and cars, and sell stock, is expressly conferred by the charter. Could it exchange the latter for the former? There is nothing to prohibit it. The company certainly had the right to make the agreement; and it is endowed with all the essentials of a valid and binding contract; there is nothing unusual or unreasonable about it; there are mutual considerations of value proceeding from each party; there was an indebtedness on the part of the company to these persons, whenever their instalments fell due, and the amount of that indebtedness was exactly the amount of the instalments.— These persons agreed to furnish engines and cars on demand, and take at once the stock in part payment, and the company agreed to give for them the stock, and advance the instalments, as they should become due; suppose the company had refused to advance the instalments as they were called and become due; would it not have been liable in damages for a breach of the contract in a court of law? or would not a court of chancery have enforced a specific performance? certainly it would. The company were to advance the instalments; there was an indebtedness falling due on a contract existing at the passage of the resolution; it was therefore one of the “necessities” which the resolution designed “to meet;” and being so indebted, we cannot see why the directors could not allow these shares to be paid with it, as well as they could receive any other obligation in payment of stock.— If they might legally receive in such payments any debt of the company (and that they might, I think I have clearly shewn) why could not this be received? Is there any distinction between this and any other obligation of the company? No distinction is perceived. If it be said this contract was made verbally, it is answered, that, that is no objection, because, first there is no proof,