LEGALITY OF PURCHASE BY A CORPORATION OF ITS OWN STOCK.

Taking the decisions as a whole, English and American, on the subject of the legality of a purchase by a corporation of its own stock, they are in a deplorable condition of conflict and confusion, though a close analysis will show that to a considerable extent the conflict is more apparent than real.

Such conflict and confusion are revealed in the results reached by text-writers on the law of corporations. As I shall presently endeavor to show, the doctrine that a purchase by a corporation of its own stock is inherently illegal, appears on analysis of the decisions to have scarcely any support in this country. Yet this doctrine seems sanctioned in 2 "Thompson on Corporations," §2054; 7 *Id.* §8352; 1 "Morawetz on Corporations," 2d ed., §§112, 434; 1 "Spelling on Corporations," §168; "Clark on Corporations," p. 153. On the other hand, the doctrine almost universally prevailing in this country, that such a purchase is legal in the absence of circumstances producing special injury, is more or less clearly sanctioned in "Taylor on Corporations," 4th ed., §135; "Elliott on Corporations," 3d ed., §193; 7 "Am. and Eng. Enc. of Law," 2d ed., p. 818. Which of these doctrines is sanctioned in "Cook on Corporations" seems not entirely clear. See Vol. I, §§311, 312.

As such conflict and confusion seem to have somewhat resulted from a failure to clearly apprehend the precise nature of the comparatively simple phenomena involved in such a purchase, it seems desirable to reach such clear apprehension before proceeding to a consideration of the decisions in detail.

A stock corporation consists of a number of stockholders or individuals who, instead of holding and managing certain property separately, hold and manage it in common. For present purposes it seems unnecessary to consider the distinction between a corporation and a partnership. The interest of each stockholder, that is his stock, consists in a proportionate undivided share of the property so held and managed in common.

To take the simplest instance first, let us consider the effect of a *surrender* or *gift* by a stockholder of his stock or interest to the corporation. Speaking generally, the property held and managed in common, that is the property of the corporation, is neither increased nor diminished by such surrender or gift. The stockholder surrendering or giving his stock ordinarily suffers loss in that he surrenders or gives something for nothing. But ordinarily no one else suffers loss. Indeed, each of the other stockholders is benefited in that his proportionate undivided share of the property held and managed in common is increased. And (save under certain conditions, as to liability on unpaid subscriptions) whether the corporation be solvent or insolvent, the creditors suffer no loss, the property of the corporation not being diminished.

In considering the effect of a *sale* by a stockholder of his stock or interest to the corporation, a specific illustration will aid. Suppose the corporate property to be of the value of \$300,000, there being three stockholders whose interests are equal, that is, of the value of \$100,000 each. Suppose now one of such stockholders to sell his stock or interest to the corporation for \$50,000. He suffers loss to the extent of \$50,000 in that he surrenders for \$50,000 property worth \$100,000. But, while the corporate property as a whole is diminished to the extent of \$50,000, the individual interests of the other two stockholders are not. That is, the stock or interest of each of these two becomes worth \$125,000 instead of \$100,000. But if the sale be for \$150,000 instead of \$50,000, it is obvious that the selling stockholder is benefited to the extent of \$50,000. And not only is the corporate property as a whole diminished to the extent of \$150,000, but the other stockholders suffer loss in that the stock or interest of each becomes worth only \$75,000 instead of \$100,000. It follows then that, in case of a sale by a stockholder of his stock or interest to the corporation, the corporate property as a whole is necessarily diminished, but it will depend entirely on the conditions of the sale, whether the sale produces benefit or loss to the stockholders that remain, or to the selling stockholder. It is insisted however in 1 "Morawetz on Corporations," 2d ed., §112, that

the necessary result is injury to "*every continuing stockholder*." See, however, article by E. C. Moore, Jr., in 8 "Southern Law Review," 369, 381 (1882).

Continuing the use of our illustration, let us consider whether injury is produced to creditors of the corporation. Of course, speaking generally, no benefit is produced to them. If the corporation is in a prosperous condition, deriving large profits from its business, and having debts that are few and insignificant, the injury to creditors is remote and contingent. But if it is in a failing condition, with say \$500,000 of liabilities, it is obvious that injury is produced to creditors, in that property available for the satisfaction of their claims is reduced from \$300,000 to \$250,000 or \$150,000, as the case may be.

A consideration of these illustrations would seem to point to the conclusion that, whether a purchase by a corporation of its own stock produces injury to the corporation, or, to speak more accurately, to those that continue to be stockholders, depends on the conditions of the sale; whether it produces injury to creditors depends on the financial condition of the corporation.

In this view, whenever the question of the legality of such a purchase is raised, it would seem important to determine whether it is raised on behalf of the corporation or continuing stockholders, or on behalf of creditors. And it would seem a logical view that the purchase will be held legal or illegal, according as it appears whether injury has resulted to the corporation or continuing stockholders, or to the creditors, as the case may be. Compare article in 8 "Southern Law Review," *supra*.

Indeed, as will presently be seen, there is observable in the decisions, particularly the American decisions, a strong tendency toward the establishment of a doctrine as thus just stated. But such decisions also reveal a wide range of doctrine, from on the one hand the broad doctrine that such a purchase is inherently illegal, and, perhaps, without reference to circumstances, to the other broad doctrine that it is legal, save under circumstances of special injury.

The subject will here be considered under the following subdivisions:

I. PURCHASE AS INHERENTLY ILLEGAL.

II. ILLEGALITY OF PURCHASE AS CONSTITUTING TRANSACTION STRICTLY ULTRA VIRES, THAT IS, BEYOND AUTHORIZED PURPOSES OF CORPORATION.

III. ILLEGALITY OF PURCHASE AS CONSTITUTING UNAUTHORIZED REDUCTION OF CAPITAL.

IV. PURCHASE AS LEGAL IN THE ABSENCE OF CIRCUMSTANCES PRODUCING SPECIAL INJURY.

V. PURCHASE AS LEGAL IN VIEW OF CIRCUMSTANCES PRODUCING SPECIAL BENEFIT.

VI. PURCHASE AS ILLEGAL IN VIEW OF CIRCUMSTANCES PRODUCING SPECIAL INJURY TO THE CORPORATION OR CONTINUING STOCKHOLDERS.

VII. PURCHASE AS ILLEGAL IN VIEW OF CIRCUMSTANCES PRODUCING SPECIAL INJURY TO EXISTING CREDITORS OF THE CORPORATION.

VIII. LEGALITY OF PURCHASE AS AFFECTED BY CHARACTER OF CORPORATION.

IX. RIGHT TO RELIEF AGAINST PURCHASE AS AFFECTED BY DISTINCTION BETWEEN EXECUTORY AND EXECUTED TRANSACTION.

X. SUMMARY.

I.

PURCHASE AS INHERENTLY ILLEGAL.

The English cases in particular seem to have been sometimes regarded as authority for the broad proposition that such a purchase is inherently illegal, even without reference to circumstances. There may be decisions professedly resting on that ground, but probably there is none the circumstances of which necessarily required the application of such a doctrine. For though in any given case the circumstances of that case may have been regarded as insufficient to prevent the purchase from being illegal, it does not necessarily follow that a distinct set of circumstances would be likewise insufficient.

The leading English decision of *Trevor v. Whitworth*, 12

L. R. App. Cas. 409 (1887) decided by the House of Lords, seems however to go very far in the direction of upholding the broad proposition that such a purchase is inherently illegal without reference to circumstances. There, on the liquidation of a manufacturing corporation, a claim for the purchase price of its own stock agreed to be purchased by it was held unenforceable. The decision is not at all based on the financial condition of the corporation, though in one of the opinions it was incidentally stated (p. 432) that this and other purchases were made, "although the company was steadily going from bad to worse, trading at a loss, and at the same time borrowing money to buy up the shares of members who wanted to withdraw," also (p. 434) that "*the creditors are unpaid.*" It may be that on the facts the decision is sustainable on the sole ground of the existence of *circumstances producing special injury to creditors*. Nor was the effect of the purchase as producing injury to the corporation or the continuing stockholders discussed, and it seems not entirely clear what, if any, such circumstances were. The purchase was at par value, but what the market value was does not appear, though in one of the opinions the agreed price was characterized as not being "the market value or as bearing any relation to the market value" (p. 432). It was regarded as insufficient to justify the purchase, that the object was to keep the corporation "as a sort of family concern," and become rid of undesirable stockholders. See pp. 417, 430, 434. See comments on this decision in 2 Ry. & Corp. L. J. 169 (1887). See also as to the doctrine as recognized in England. *Teasdale's Case*, 9 L. R. Ch. App. 54 (1873) (and comments thereon in *Trevor v. Whitworth*, *supra*, and *Hope v. International Financial Soc.*, *infra*); *Walter's Case*, 3 DeGex & Sm. 244 (1850); *Ex parte Morgan*, 1 Macn & G. 225 (1849); *Cross' Case*, 38 L. J. Ch. 583 (1869). Compare *Bennett's Case*, 5 DeGex, M. & G. 284 (1854).

On a close analysis it will be found that, whatever may be certain language used in opinions, in few if any of the United States has been established the extreme English doctrine that such a purchase is inherently illegal. As a rule the legality of such a purchase rests in this country on

special circumstances of injury to stockholders or creditors. The decisions in Ohio and Kansas seem to go as far as any in recognizing the English doctrine.

In *Coppin v. Greenlees & Ransom Co.*, 38 Ohio St. 275 (1882) where an agreement by a manufacturing corporation to purchase its own stock was held unenforceable, the court said: "We think the decided weight of authority both in England and in the United States, is against the existence of the power, unless conferred by express grant or clear implication." See also *State, ex rel. v. Oberlin Building & Loan Assoc.*, 35 Ohio St. 258, 263 (1879); *Hubbard v. Riley*, 3 Cinn. L. Bull. 434 (1878); *Wills v. Reed*, 5 Cinn. L. Bull. 79 (1880); *Shaw v. Ohio Edison Co.*, 19 Weekly L. Bull. 292 (Cinn. O. Super. Ct. 1888); *Merchants' National Bank v. Overman Carriage Co.*, 17 Ohio Cir. 253 (1898). But *Morgan v. Lewis*, 46 Ohio St. 1, 6 (1888) (see under V) seems to go far toward assimilating the doctrine as recognized in Ohio with the doctrine generally prevailing in this country.

The general doctrine that such a purchase is illegal in the absence of statutory authority, was also more or less distinctly recognized in *German Savings Bank v. Wulfekuhler*, 19 Kan. 60 (1877); see also *Abeles v. Cochran*, 22 Kan. 405 (1879); *St. Louis Manuf. Co. v. Hilbert*, 24 Mo. App. 338 (1887).

The question of the legality of such a purchase in the absence of statutory authority, was regarded as unnecessary to be decided, in *Vent v. Duluth Coffee & Spice Co.*, 64 Minn. 307 (1896); *Jefferson v. Burford*, 17 S. W. Rep. 855 (Ky. Ct. App. 1891); *Herring v. Ruskin Coop. Assoc.* 52 S. W. Rep. 327 (Tenn. Ch. L. App. 1899); *Chapman v. Ironclad Rheostat Co.*, 62 N. J. Law, 497 (1898); *Miller v. Washington Southern Ry. Co.*, 11 Wash. 414 (1895). See *Jones v. Morrison*, 31 Minn. 140, 146 (1883); *Cartwright v. Dickinson*, 88 Tenn. 476, 485 (1890); *Coleman v. Columbia Oil Co.*, 51 Pa. St. 74 (1865); *Matter of Reciprocity Bank*, 22 N. Y. 9, 18 (1860); *U. S. Trust Co. v. Harris*, 2 Bosw. (N. Y.) 75, 90 (1857); *Bank of San Luis Obispo v. Wickersham*, 99 Cal. 655 (1893); *Woodroof v. Howes*, 88 Cal. 184, 198 (1891); *Calteaux v. Miller*, 102

Wis. 525 (1899); *Solomon Salt Co. v. Barber*, 58 Kan. 419 (1897); *Browne v. St. Paul Plow Works*, 62 Minn. 90 (1895); *Yeaton v. Eagle Oil & Refining Co.*, 4 Wash. 183 (1892).

The special grounds of the general doctrine that such a purchase is inherently illegal will now be considered under Points II and III.

II.

ILLEGALITY OF PURCHASE AS CONSTITUTING TRANSACTION STRICTLY ULTRA VIRES, THAT IS, BEYOND AUTHORIZED PURPOSES OF CORPORATION.

In *Trevor v. Whitworth* (see under I) the purchase was regarded as illegal, whether or not it operated as a cancellation or extinguishment of the stock, that is to say, if it operated as a cancellation or extinguishment, it was an unauthorized reduction of the capital, while, if it did not so operate, it was "a trafficking in shares," and hence a transaction beyond the authorized purposes of the corporation (pp. 419, 425). See also *Hope v. International Financial Soc.*, 4 L. R. Ch. Div. 327, 335 (1876). Under this point we consider the latter alternative only, reserving the other for consideration under III.

This conclusion was reached by applying the broad doctrine declared in the leading decision of *Ashbury Railway, etc., Co. v. Riche*, 7 L. R. House of Lords 653 (1875) that "a company cannot employ its funds for the purpose of any transactions which do not come within the objects specified in the memorandum." See also *Zulueta's Claim*, 5 L. R. Ch. App. 444 (1870). The court in *Trevor v. Whitworth* applied on this point the following language of Brett, J., in *Hope v. International Financial Society*, 4 L. R. Ch. Div. 327, 339 (1876).

"It is said that a selling of shares is not of itself a trafficking in shares. Well, that may be quite true. If I make a present of a horse I cannot be said to be dealing in horses; but I apprehend if I buy a horse for the purpose of selling it again, I do deal in a horse. So here, if you take that to be

the reasonable meaning of the resolution, then the resolution is this, that the company are to buy the shares for the purpose of reissuing them, that is, for the purpose of selling them again. They do not say so in terms, but that is the necessary effect of what they intend to do by the resolution. That seems to be a trafficking in shares, and a carrying on of the business which is not within the terms of the memorandum of association. It is true that that may not be a continuing business, but no more was that which was done in the case of *The Ashbury Railway Carriage and Iron Company v. Riche*. That was only to be one transaction, but because the transaction was a business transaction not contemplated or mentioned in the memorandum of association it was not allowed."

In another opinion in *Trevor v. Whitworth* however, the purchase was characterized (p. 430) as

"not an isolated transaction, with a single troublesome shareholder who was obstructing the business of the company, but part and parcel of a scheme carried out by the directors under the articles of association, by which they acquired for the company more than one-fourth of the whole shares of its undertaking, and returned to the shareholders from whom they purchased, more than one-fourth of its paid up capital."

For other English decisions more or less closely in point, see *Daniell's Case*, 22 Beav. 43 (1856); *Munt's Case*, 22 Beav. 55 (1856). Compare *Ex parte Credit Foncier, etc.*, 7 L. R. Ch. App. 161 (1871); *Re Clayton Mills Manuf. Co.*, 37 L. R. Ch. Div. 28 (1887); *Hodgkinson v. National Live Stock Ins. Co.*, 26 Beav. 473 (1859); *Evans v. Coventry*, 25 L. J. Ch. 489 (1856); s. c. on appeal 8 DeGex, M. & G. 835 (1857).

There has been comparatively little tendency in this country to base the illegality of the purchase on the ground that it is beyond the authorized purposes of the corporation, instead of on special circumstances of injury, though in *Coppin v. Greenlees & Ransom Co.*, 38 Ohio St. 275 (1882), for instance, cases denying the power were said to rest upon "the foundation principle that a corporation possesses no

powers except such as are conferred upon it by its charter, either by express grant or necessary implication."

But this application of the doctrine of *ultra vires* may on principle be open to criticism, as confounding the distinction between what is strictly an *ultra vires act*, and what may be termed a *wrongful act ultra vires*. This distinction may be illustrated by comparing the case of the purchase by a banking corporation, of a building suitable only for manufacturing purposes, with the case of the purchase by such a corporation of a building suitable indeed for banking purposes only, but at an enormously extravagant price. If under any conditions the purchase in the latter case constitutes a legal wrong, the illegality rests on a different ground from the illegality of the purchase in the former case. For the purchase of a building suitable only for manufacturing purposes, is inherently outside the authorized purposes of a banking corporation, that is, strictly *ultra vires*, while the purchase of a building suitable only for banking purposes, is inherently within the authorized purposes of such a corporation, that is, *infra vires*, the legal wrong of such a purchase, if any there be, resting on special circumstances of injury accompanying such *ultra vires act*. The purchase by a corporation of its own stock, if or whenever wrongful, seems to me (so far at least as concerns any injury to the corporation or continuing stockholders) to be analogous to the case supposed, of a purchase of a building for banking, rather than of one for manufacturing purposes.

Of course the objection here considered is obviated by express statutory authority for the purchase. And in some instances, where the statutory authority is less obvious, such purchases have been sustained. Thus in *Robison v. Beall*, 26 Ga. 17, 28 (1858) where reference was made to a statute conferring power to purchase and sell every kind of "goods, chattels and effects." So in *Iowa Lumber Co. v. Foster*, 49 Iowa, 25 (1878) of a statute conferring power to acquire "any property that may be deemed desirable in the transaction of its business." So in *Rollins v. Shaver Wagon, etc., Co.*, 80 Iowa 380 (1890) of power "to acquire any property, real and personal." See also *Farmers' & Mechanics' Bank v. Champlain Transp. Co.*, 18 Vt. 131, 139 (1846); *Shoe-*

maker v. Washburn Lumber Co., 97 Wis. 585, 594 (1897). Compare *Singers' Case*, 4 Weekly Notes, 206 (1869); *Cockburn's Case*, 4 DeGex & Sm. 177 (1850).

On the other hand in *Coppin v. Greenlees & Ransom Co.*, 38 Ohio St. 275 (1882) authority to so purchase was held not conferred on a corporation by a statute empowering it "to acquire and convey at pleasure all such real and personal estate as may be necessary or convenient to carry into effect the objects of the corporation." And in *Barton v. Port Jackson, etc., Plank Road Co.*, 17 Barb. 397, 407 (1854) not on a plank road corporation by a statute empowering it "to hold, purchase and convey, such real and personal estate as the purposes of the corporation shall require, not exceeding the amount limited in their charter."

In some cases the illegality of the purchase has been based on statutory prohibitions. Thus in *German Savings Bank v. Wulfekuhler*, 19 Kan. 60 (1877) of a provision that no such corporation should "employ its stock, means, assets or other property, directly or indirectly, for any other purpose whatever, than to accomplish the legitimate objects of its creation."

III.

ILLEGALITY OF PURCHASE AS CONSTITUTING UNAUTHORIZED REDUCTION OF CAPITAL.

As already stated, there has been comparatively little tendency in this country to base the illegality of such a purchase on the ground that it is beyond the authorized purposes of the corporation; rather it has been based on the existence of special circumstances of injury. But we are now confronted with the additional objection that the purchase is illegal as constituting an unauthorized reduction of the capital.

Does such a purchase constitute a reduction of capital? To the extent that the selling stockholder receives compensation for his stock, the conclusion seems inevitable that it does. As already pointed out, it may well be that the proportionate share of each continuing stockholder is increased,

but this does not prevent the property of the corporation as a whole from being reduced. It is no answer to say that the stock remains uncanceled and unextinguished in the hands of the corporation, and may be reissued. This means no more than that at some future time some person may be found ready and willing to replace the property removed by the selling stockholder. In the meantime, however, there is an unqualified reduction of the capital, that is, of the property of the corporation as a whole. See 1 "Morawetz on Corporations," 2d ed., §§ 112, 114.

Although, as we shall presently see, the weight of American authority is overwhelmingly to the contrary, in a few instances there has been what I regard as a correct apprehension of the legal effect of the purchase. Thus in *Tulare Irrigation District v. Kaweah Canal, etc., Co.*, 44 Pac. Rep. 662 (Sup. Ct. Cal. 1896) where a contract by a corporation to convey *all its personal property* was held to not include its own stock that it had purchased, it was said: "Whether the defendant (corporation) had power to permanently reduce its stock or not, the effect of the purchase was to reduce its stock *temporarily* and until it should be regularly reissued. So long as it remains in the treasury, it represents no part of or interest in the property of the corporation. It was as though it had never been issued." So in *Belknap v. Adams*, 49 La. Ann. 1350 (1897) it was held that the stock was in such a case "by the purchase cancelled, and remained cancelled for all purposes until reissued," the court saying: "The purchase is an unauthorized use of the corporate funds, but when permitted to stand or is unasailed, the purchase simply extinguishes the stock and increases the rights of the remaining stockholders." And *Shoemaker v. Washburn Lumber Co.*, 97 Wis. 585, 589, 591 (1897) may be authority for the position that the purchase operates as a reduction. In England, it seems established that the purchase constitutes a reduction of capital. Thus in *Re Sovereign Life Assurance Co.*, 3 L. R. Ch. Div. (1892) 279, 288 (Lindley, J.) it was held that "a reduction of capital is a necessary consequence of a statutory power enabling a company to invest its assets in the purchase of its own shares," and see *Trevor v. Whitworth*, *infra*.

Is such reduction of the capital illegal as an unauthorized corporate act? In the light of the softened conceptions of the limits of corporate power, adapted to the needs of modern business corporations, there would seem to be much plausibility in the contention that, even in the absence of statutory authority, there is no legal objection to the increase of the capital of a corporation to the limit of its needs. Mediæval conceptions have however established a contrary doctrine, so that a discussion of the point seems purely academic. But, allowing that broad considerations of public policy forbid the increase of the capital of a corporation, in the absence of statutory authority, there would seem to remain plausibility in the contention that such considerations are inapplicable to a mere reduction. Here, again however a contrary doctrine has been so firmly established, that a discussion of the point is probably purely academic. See 2 "Thompson on Corporations," §2079. In this view a purchase by a corporation of its own stock is inherently illegal, as constituting an unauthorized reduction of the capital.

This is the doctrine apparently sanctioned by the English House of Lords in *Trevor v. Whitworth*, though to some extent the decision on this point was based on the existence of special statutory provisions. Here it was said (p. 415):

"By the Act of 1867 provision was made enabling a company under strictly defined conditions to reduce its capital. Nothing can be stronger than these carefully worded provisions to show how inconsistent with the very constitution of a joint stock company, with limited liability, the right to reduce its capital was considered to be The stringent precautions to prevent the reduction of the capital of a limited company, without due notice and judicial sanction, would be idle if the company might purchase its own shares wholesale, and so effect the desired result."

So in another opinion it was said (p. 437): "When Parliament sanctions the doing of a thing under certain conditions and with certain restrictions, it must be taken that the thing is prohibited unless the prescribed conditions and restrictions are observed Payment of capital to any one shareholder is just as much a reduction of capital,

and just as detrimental to the interests of creditors, as the payment of the same amount among all the shareholders ratably."

Moreover some stress was laid on provisions that the memorandum of association should state the amount of capital, and that, save as prescribed therein, "*no alteration should be made in the conditions contained in*" such memorandum, these provisions being interpreted (p. 415) as "assuring to those dealing with the company that the whole of the subscribed capital, unless diminished by expenditure upon the objects defined by the memorandum, shall remain available for the discharge of its liabilities." See also pp. 423, 433; *Hope v. International Financial Soc.*, 4 L. R. Ch. Div. 327, 336 (1876); *St. Louis Manuf. Co. v. Hilbert*, 24 Mo. App. 338 (1887).

The American decisions have as a rule avoided the conclusion that the purchase constitutes a reduction of the capital, and hold on the contrary that the stock continues to be held by the corporation uncanceled and unextinguished, so that it may be reissued. The illogical character of this doctrine I have already endeavored to point out. Such decisions are *Dupee v. Boston Water Power Co.*, 114 Mass. 37 (1873); *Commonwealth v. Boston & Albany R. R. Co.*, 142 Mass. 146 (1886); *Leland v. Hayden*, 102 Mass. 542, 551 (1869); *City Bank of Columbus v. Bruce*, 17 N. Y. 507 (1858); *Vail v. Hamilton*, 85 N. Y. 453 (1881); *Williams v. Savage Manuf. Co.*, 3 Md. Ch. 418, 452 (1851); *Morgan v. Lewis*, 46 Ohio St. 1, 7 (1888); *Rivanna Navigation Co. v. Dawsons*, 3 Gratt. (Va.) 19, 24 (1846); *Hartridge v. Rockwell*, R. M. Charlton (Ga.) 260 (1828); *Robison v. Beall*, 26 Ga. 17, 28 (1858); *State Bank of Ohio v. Fox*, 3 Blatchf. 431 (1856); *State, ex rel. Page v. Smith*, 48 Vt. 266, 285 (1876); *Eggmann v. Blanke*, 40 Mo. App. 318 (1890); *St. Louis Rawhide Co. v. Hill*, 72 Mo. App. 142, 148 (1897); *Jefferson v. Burford*, 17 S. W. Rep. 855 (Ky. Ct. App. 1891); *Barto v. Nix*, 15 Wash. 563 (1896). See also *Commissioners of Johnson County v. Thayer*, 94 U. S. 631, 643 (Oct., 1876); *Chetlain v. Republic Life Ins. Co.*, 86 Ill. 220, 224 (1877); *Howe Grain & Mercantile Co. v. Jones*, 21 Tex. Civ. App. 198 (1899); *Matter of Recipro-*

ity Bank, 22 N. Y. 9, 17 (1860); *Bank of San Luis Obispo v. Wickersham*, 99 Cal. 655, 661 (1893); *Ralston v. Bank of California*, 112 Cal. 208 (1896). Compare as to scrip certificates *Rogers v. Phelps*, 31 N. Y. State Rep. 872, 876 (Sup. Ct., Gen. T., 1st Dept., 1890). In some decisions it has been intimated that the question whether the purchase operates as a reduction is one of intent on the part of the corporation. See *City Bank of Columbus v. Bruce*, *supra*; *State, ex rel. Page v. Smith*, *supra*.

The precise status of the stock during this period of suspended animation, between the time of purchase and that of reissue, seems not to have been fully determined. That it cannot be voted upon, see *Ex parte Holmes*, 5 Cowen, 426, 434 (1826); *American Railway-Frog Co. v. Havens*, 101 Mass. 398, 402 (1869); *Brewster v. Hartley*, 37 Cal. 15, 27 (1869); *Monseaux v. Urquhart*, 19 La. Ann. 482 (1867); see also *Farwell v. Houghton Copper Works*, 8 Fed. Rep. 66 (Cir. Ct. Mich. 1881); *U. S. v. Columbian Ins. Co.*, Fed. Cas. 14840; *Allen v. DeLagerberger*, 20 Weekly L. Bull. 368 (Cinn. Ohio Super. Ct. 1888); *Vail v. Hamilton*, 85 N. Y. 453 (1881).

The decisions that the purchase does not constitute a reduction of capital, avoid the difficulty presented in the question, whether such reduction must not be equal or proportionate as among all the stockholders, in other words, whether a purchase from one stockholder, to the exclusion of the others, does not constitute an illegal discrimination against them. Thus in *Currier v. Lebanon Slate Co.*, 56 N. H. 262, 270 (1875) a statutory provision for reducing the capital stock of a corporation, was held not to authorize a purchase by the corporation of its own stock from a stockholder holding only a portion of the entire stock. The court said:

"The statute ought not to be construed to work other than exact and even justice to all the shareowners . . . I do not think a corporation has the power (under the statute) to diminish its capital stock by the purchase and extinguishment of a portion of its shares without the consent and against the protest of any of its stockholders when such purchase and extinguishment would operate for the relief

and benefit of the stockholders from whom the stock is purchased, and will increase the liability of the remaining stockholders . . . Probably a vote allowing each stockholder to surrender such proportion of the shares owned by him as the amount of the proposed reduction in the capital stock bears to the whole amount of capital stock, would not be open to objection, but would be a compliance with the requirements of the statute;—but that was not the course pursued here.”

But under a statutory provision for reducing the stock of a corporation, a scheme involving a purchase of the stock of a portion of the stockholders was sanctioned in *British & American Trustee, etc., Co. v. Couper*, L. R. App. Cas. (1894) 399.

IV.

PURCHASE AS LEGAL IN THE ABSENCE OF CIRCUMSTANCES PRODUCING SPECIAL INJURY.

As we have seen, the doctrine seems established in England that such a purchase is inherently illegal, either on the ground that it constitutes a transaction beyond the authorized purposes of the corporation, or on the ground that it constitutes an unauthorized reduction of capital. As we have also seen, neither of these grounds is regarded by the American decisions generally as a sufficient basis of the illegality of the purchase. On the contrary, the prevailing American doctrine seems to be that the purchase is legal in the absence of circumstances producing special injury to other stockholders or to creditors.

Very suggestive in this connection is *State v. Minnesota Thresher Manuf. Co.*, 40 Minn. 213, 227 (1889), where a *quo warranto* proceeding was held not a proper remedy against such a purchase, the court saying:

“If it is a wrong to other stockholders, they have a perfect remedy; and, so far as creditors are concerned, if the act is illegal, the parties who surrendered the stock would still be personally responsible as stockholders in case of the insolvency of the corporation.”

In *Chicago, Pekin & Southwestern R. R. Co. v. Town of Marseilles*, 84 Ill. 145, 643 (1876-77), where an agreement by a corporation for the purchase of its own stock was held enforceable, the court said, after a citation of cases (p. 645) :

"These authorities, we think, fully recognize the power of the directors of a company, when not prohibited by their charter, to purchase shares of stock of their company. It falls within the scope of the power of the directors to manage and control the affairs and property of the company for the best interests of the stockholders, and when they have thus acted, we will presume, until the contrary is shown, that the purchase was for legitimate and authorized purposes.

"If it were shown that the purchase was made to promote the interests of the officers of the company alone, and not the stockholders generally, or if for the benefit of a portion of the stockholders and not all, or for the injury of all or only a portion of them, or if it operated to the injury of creditors, or would defeat the end for which the body was created, or if it was done for any other fraudulent purpose, then chancery could interfere."

See also *Havemayer v. Bordeaux Co.*, 8 Nat. Corp. Rep. 127 (Cir. Ct. Cook Co., Ill., 1894).

So in *First National Bank of Salem v. Salem Capital Flour Mills Co.*, 39 Fed. Rep. 89 (Cir. Ct. Oreg., 1889), such an agreement was held enforceable, the purchase being for an amount above par and with intent to reissue the stock. At the time of the purchase the corporation appeared to be solvent, and was much more than able to pay its debts. It had only one creditor and the purchase did not injuriously affect the interest of such creditor, nor was it so intended. As the court said (p. 96) :

"It was made in good faith, to acquire the control of a valuable property free from the dissensions arising from the personal distrusts and antipathies of a dissatisfied faction of the stockholders."

The court added :

"Neither in my judgment is a purchase of stock by a corporation, even when made under circumstances or for pur-

poses that make it voidable, generally and absolutely void, *but only as against those who are injured by it*, and in some proper and timely proceeding seek redress against it."

So in *Dupee v. Boston Water Power Co.*, 114 Mass. 37 (1873), relief was denied a stockholder against such an agreement for purchase at a price not exceeding the extrinsic value of the stock as based on a "reasonable estimate of" the corporate property. See also *Leland v. Hayden*, 102 Mass. 542, 551 (1869).

In *Verplanck v. Mercantile Ins. Co.*, 1 Edw. Ch. 84, 94 (1831), in a stockholder's suit, relief was denied against such a purchase, which was claimed to be a fraud against the other stockholders. The court said:

"I can easily imagine how it may be so in some instances, and why it may prove injurious to the interests of the latter. But there is no evidence before me of any such design; and it is not very apparent how the purchase of the shares of its own stock has been detrimental to the interests of the stockholders. And even if it were proved, the remedy, I think, is not against the company in its corporate capacity, but against the directors by whom the fraud may have been committed or through whose management the loss has been sustained. The statute makes them personally accountable; and, therefore, the application to this court must be made in a different form."

And the following are decisions in which such a purchase was sustained, and, so far as appears, on the general ground just indicated: *Vail v. Hamilton*, 85 N. Y. 453 (1881); *Hartridge v. Rockwell*, R. M. Charlton (Ga.) 260 (1828); *Robison v. Beall*, 26 Ga. 17, 28 (1858); *Commissioners of Johnson County v. Thayer*, 94 U. S. 631, 643 (Oct., 1876); *Blalock v. Kernersville Manuf. Co.*, 110 N. C. 99 (1892); *Howe Grain & Mercantile Co. v. Jones*, 21 Tex. Civ. App. 198 (1899); *New England Trust Co. v. Abbott*, 162 Mass. 148 (1894); *Eggmann v. Blanke*, 40 Mo. App. 318 (1890; so held as a matter of Illinois law).

Even in England, where, as we have seen, so strict a rule has been established against the legality of such a *purchase*, a *forfeiture* or *surrender* has been regarded as unobjection-

able. Thus, in *Trevor v. Whitworth*, 12 L. R. App. Cas. 409, 417 (1887), the case of a forfeiture or surrender was distinguished as "not involving any payment out of the funds of the company." See also pp. 424, 438. As to gift to corporation, see *Lake Superior Iron Co. v. Drexel*, 90 N. Y. 87, 93 (1882); as to bequests, *Rivanna Navigation Co. v. Dawsons*, 3 Gratt. (Va.) 19, 24 (1846).

V.

PURCHASE AS LEGAL IN VIEW OF CIRCUMSTANCES PRODUCING SPECIAL BENEFIT.

If, as apparently held in the decisions just considered, it be sound doctrine that the purchase is legal in the absence of circumstances producing special injury, it is not strictly necessary to consider in such a case whether there exist any circumstances producing special benefit. Nevertheless, in some instances the courts have been apparently unwilling to base the legality of the purchase solely on the negative ground of absence of injury, and have more or less distinctly based it on the presence of benefit.

Conspicuous illustrations are cases of stock received in payment of an existing debt. Thus in *Taylor v. Miami Exporting Co.*, 6 Ohio 176, 219 (1833); *City Bank of Columbus v. Bruce*, 17 N. Y. 507 (1858); *State Bank of Ohio v. Fox*, 3 Blatchf. 431 (1856); *Barto v. Nix*, 15 Wash. 563 (1896); *Dock v. Schlichter Jute Cordage Co.*, 167 Pa. St. 370, 377 (1895). See also *Ralston v. Bank of California*, 112 Cal. 208, 213 (1896).

A wide scope was allowed to what we may here call the doctrine of special benefit, in *Morgan v. Lewis*, 46 Ohio St. 1, 6 (1888), where, the legality of the purchase being in dispute, it was held error to exclude evidence tending to show that the transaction was for the purpose of taking back from the corporation property for which the stock had been issued, and the possession of which property by the corporation promised to result in a disappointing and unsatisfactory venture, and was rapidly breeding discord among the stockholders. The court, while recognizing as

well established the general doctrine that a corporation cannot purchase its own stock, also recognized as an exception its power to take such stock in satisfaction of a debt, and said:

"This has been recognized as an exception supposed to rest upon the necessity of avoiding loss. . . . If the same or a like necessity of avoiding loss should arise in any of the transactions of the company, it could not, with any show of reason, be contended that the application of this principle of necessity should be limited by any iron rule to the case of taking stock for an otherwise hopeless debt."

Compare *Cincinnati, Hamilton, etc., R. R. Co. v. Duckworth*, 2 Ohio Cir. 518, 536 (1887); *State v. Franklin Bank*, 10 Ohio 91, 97 (1840). In *St. Louis Rawhide Co. v. Hill*, 72 Mo. App. 142, 148 (1897), where a contract by a corporation to sell its own stock that it had purchased, was held enforceable, the court said:

"The transaction in this case was to acquire by the corporation eighty shares of its stock in consideration of its surrender of an overdue note for \$1000, and to resell these certificates for \$2000 cash. The transaction, had it been carried out, would have benefited both the corporation and its creditors, and must be held to come within the exception of the rule that a corporation cannot buy and sell its own certificates of stock."

Compare as to surrender of stock subscribed for, *Cooper v. Frederick*, 9 Ala. 738 (1846).

In England a tendency had been manifested to give effect to this doctrine of special benefit. Thus in *Re Dronfield Silkstone Coal Co.*, 17 L. R. Ch. Div. 76 (1880), reluctantly followed in *Weekes' Case*, 17 L. R. (Ireland) 239 (1886). But such tendency received a decided check in *Trevor v. Whitworth*, *supra*, where see extended comments on *Re Dronfield Silkstone Coal Co.* Perhaps the same tendency was manifested in *Re Denver Hotel Co.*, 1 L. R. Ch. Div. (1893) 495, where, a corporation having power under its articles to "accept a surrender of a share or shares," while forbidden to expend its funds in the purchase of its shares.

an agreement by which it was to transfer certain property, the possession of which was disadvantageous to it, *and receive its own shares*, was sustained, as a *surrender*, however, not as a *purchase*. See however comments on this decision in *British & American Trustee, etc., Co. v. Couper*, 1 L. R. App. Cas. (1894) 399, 410, 414.

VI.

PURCHASE AS ILLEGAL IN VIEW OF CIRCUMSTANCES PRODUCING SPECIAL INJURY TO THE CORPORATION OR CONTINUING STOCKHOLDERS.

We now come to a class of cases as to which there is agreement among the decisions, that is, as to the result, though not as to the grounds, of the decision. For it seems universally agreed that the purchase is illegal if accompanied with sufficient circumstances of special injury, whether to the corporation or the continuing stockholders, or to creditors. It will, of course, be understood that in one class of decisions the illegality is regarded as inherent in the purchase, while in the other it is based on the special circumstances of injury. It is only the latter class that we shall here consider.

Although the illegality is more frequently based on circumstances of special injury to creditors, rather than to the corporation or continuing stockholders, yet some cases are properly referable to the latter class. It is these alone that we shall here consider, reserving cases of injury to creditors for consideration under VII.

A good illustration is furnished by *Lowe v. Pioneer Threshing Co.*, 70 Fed. Rep. 646 (Cir. Ct. Minn., 1895). Here it was clearly recognized that "in the absence of a charter prohibition or a statute forbidding it, there is no reason why the stock should not be purchased, at least with the profits derived from the business of the corporation, where all the stockholders assent thereto." Yet the purchase there under consideration was held void as in fraud of the rights of minority stockholders, as such purchase was

to be made by a transfer of nearly all the assets and property of the corporation to a few favored stockholders.

So in *Price v. Pine Mountain Iron & Coal Co.*, 32 S. W. Rep. 267 (Ky. Ct. App., 1895) the purchase there under consideration was considered as "disastrous to the last degree to the main body of the stockholders," the court saying:

"Corporations ought not to be allowed to speculate in their own stocks; and while they may not always do an illegal thing in buying in their own stock, such a transaction must be not only in entire good faith, but the exchange must be of equal value, and the transaction free from all fraud, actual or constructive. . . . The contract ought not to be to the advantage of a few favored stockholders, to the injury of the great body of them."

So in *Currier v. Lebanon Slate Co.*, 56 N. H. 262 (1875), in a stockholder's suit, relief was granted against a purchase from a stockholder who had been unable to pay the assessments thereon in full. The ground of the decision seems to have been that assets of the corporation were diverted to pay for stock of little or no value. The court said (p. 268):

"I am not prepared to say that under the laws of this state a solvent corporation may not, in good faith, and for the purpose of securing payment of a debt against a stockholder, which might not otherwise be collected without risk, delay, and expense, receive its own stock in payment therefor at its fair value, and hold the same as property; in which case it would not become extinguished, and might be reissued to the purchaser thereof. But this case differs widely from such a case. The object of the vote in question appears to have been, or was declared to be, not to collect a debt due to the corporation, but to afford relief to a stockholder by taking off his hands stock for which he had partially paid, but for which he was unable to complete the payments. This was done by hiring money for the purpose, or rather by giving him the notes of the corporation to be negotiated by him, and ultimately paid by the company, and against the protest of the plaintiff. It is difficult to see how the welfare of the corporation could be promoted by hiring money, or incurring further liabilities, to purchase in one-tenth of its

capital stock, for which there had been no sale in the open market, and upon which no dividend had ever been declared, and for which it was extremely doubtful whether another purchaser could be found, unless the affairs of the company should improve (a condition which appearances then hardly warranted). The inevitable result was to release Liscomb from paying into the treasury of the company the balance of the assessments then made, or to which the stock was liable, amounting to \$8,000."

"The action of the company relieved Mr. Liscomb from his contract to pay the overdue assessments upon one hundred shares of stock, but it involved the company in a further debt of \$2,000 for one hundred shares of stock for which the company had no use, and which it is fair to presume others would have bought if they had possessed any value. The assets of the company were thus withdrawn, and appropriated to an unlawful purpose, and at the same time the indebtedness of the company was increased."

See also as to illegality of purchase as producing special injury to the corporation or continuing stockholders. *Re Republic Ins. Co.*, 3 Bissell, 452, 458 (1873); *Augsburg Land, etc., Co. v. Pepper*, 95 Va. 92 (1897).

VII.

PURCHASE AS ILLEGAL IN VIEW OF CIRCUMSTANCES PRODUCING SPECIAL INJURY TO EXISTING CREDITORS OF THE CORPORATION.

It is the generally accepted doctrine in this country that the "capital stock of an insolvent corporation is a trust fund for the payment of its debts," to use the language of, for instance, *Handley v. Stutz*, 139 U. S. 417, 427 (1891). If there be any doubt as to the propriety of extending this doctrine to unpaid subscriptions for stock, there would seem to be none as to tangible assets. Purchase by an insolvent corporation of its own stock necessarily involves the diversion of its assets from its creditors, to the extent that such assets constitute a consideration for the purchase. This is regarded as a legal injury to such creditors, that is to say,

creditors who are such at the time of the purchase, as distinguished from those subsequently becoming such. As to this distinction see *Shoemaker v. Washburn Lumber Co.*, 97 Wis. 585, 592 (1897); *Rollins v. Shaver Wagon, etc., Co.*, 80 Iowa, 380 (1890); *Cooper v. Frederick*, 9 Ala. 738 (1846); *Republic Life Ins. Co. v. Swigert*, 135 Ill. 150, 163 (1890). Nor will such relief be granted where the corporation was solvent at the time of the purchase, especially if the conditions of the purchase were fair and free from fraud. See *Fraser v. Ritchie*, 8 Ill. App. 554 (1881), and compare *Moon Bros. Co. v. Waxahachie Co.*, 13 Tex. Civ. App. 103, 107 (1896); *Howe Grain & Mercantile Co. v. Jones*, 21 Tex. Civ. App. 198 (1899).

Subject, however, to these qualifications, relief has in numerous instances been granted to creditors of a corporation against such a purchase. Thus they have been allowed to subject to their claims the property transferred for the stock, as in *Clapp v. Peterson*, 104 Ill. 26 (1882; where, however, there was no proof of the condition of the corporation at the time of the exchange); *Commercial National Bank v. Burch*, 141 Ill. 519 (1892); *Crandall v. Lincoln*, 52 Conn. 73, 100 (1884); *Buck v. Ross*, 68 Conn. 29 (1896). Similarly, claims for the price of the purchased stock have not been allowed to be enforced to the prejudice of creditors. *Columbian Bank's Estate*, 147 Pa. St. 422, 436; *Hamor v. Taylor-Rice Engineering Co.*, 84 Fed. Rep. 392 (Cir. Ct. Del., 1897). See also *Adams & Westlake Co. v. Deyette*, 8 S. D. 119 (1895). So, one selling or surrendering his stock has been held to continue to be a stockholder, for the purpose of enforcing his liability as such to creditors. *Gill v. Balis*, 72 Mo. 424 (1880). Compare, however, *Republic Life Ins. Co. v. Swigert*, 135, Ill. 150, 162 (1890); *Chetlain v. Republic Life Ins. Co.*, 86 Ill. 220 (1877).

See also as to granting relief to creditors, *Roan v. Winn*, 93 Mo. 503 (1887); *Heggie v. Building & Loan Assoc.*, 107 N. C. 581, 595 (1890); *Bridgens v. Dollar Savings Bank*, 66 Fed. Rep. 9 (Cir. Ct. Mo., 1895); *Farnsworth v. Robbins*, 36 Minn. 369 (1887); *Alexander v. Relfe*, 74 Mo. 495 (1881); *Butler Paper Co. v. Robbins*, 151 Ill. 588 (1894); *Bent v. Hart*, 10 Mo. App. 143, 147 (1881).

In some instances the purchase has been characterized as producing injury to creditors, without reference to the condition of the corporation as solvent or insolvent, and in the absence of objection made by any creditor. Such an instance is *Coppin v. Greenlees & Ransom Co.*, 38 Ohio St. 275 (1882), where, though as already stated, the illegality of the purchase was based on inherent want of power, and though, so far as appears, there was no evidence as to the financial condition of the corporation, and although no objection to the purchase was made on behalf of any creditor, reference was, unnecessarily as it would seem, made to the following provision of the Ohio constitution: "Dues from corporations shall be secured by such individual liability of stockholders, and other means, as may be prescribed by law; but, in all cases, each stockholder shall be liable, over and above the stock by him or her owned, and any amount unpaid thereon, to a further sum, at least equal in amount to such stock." The court said:

"The corporation itself cannot be a stockholder of its own stock within the meaning of this provision of the constitution. Nobody will deny this proposition. And if a corporation can buy one share of its stock at pleasure, why may it not buy every share? If the right of a corporation to purchase its own stock at pleasure, exists and is unlimited, where is the provision intended for the benefit of creditors? This is not the security to which the constitution invites the creditors of corporations. I am aware that the amount of stock required to be issued is not fixed by the constitution or by statute, and also that provision is made by statute for the reduction of the capital stock of corporations; but of these matters, creditors are bound to take notice. They have a right, however, to assume that stock once issued, and not called back in the manner provided by law, remains outstanding in the hands of stockholders, liable to respond to creditors to the extent of the individual liability prescribed. In this view it matters not whether the stock purchased by the corporation that issued it, becomes extinct, or is held subject to be re-issued. It is enough to know that the corporation, as purchaser of its own stock, does not afford to creditors the security intended. And surely, if the law forbids the organization of a corporation without stock,

because the required security is not furnished, it cannot be that, having brought the corporation into existence, it invests it with power to assume at pleasure the identical character or relation to the public, that was an insurmountable objection to the giving of corporate existence in the first place."

Similar views were expressed as to the effect of a like constitutional provision in *German Savings Bank v. Wulfe-kuhler*, 19 Kan. 61 (1877), where no objection to the purchase was made on behalf of any creditor, though the corporation was at the time of the purchase in an "embarrassed condition." See also *St. Louis Manuf. Co. v. Hilbert*, 24 Mo. App. 338 (1887). Compare *Vercontere v. Golden State Land Co.*, 116 Cal. 410 (1897).

VIII.

LEGALITY OF PURCHASE AS AFFECTED BY CHARACTER OF CORPORATION.

There appears to be no distinction affecting the power of purchase, based on the character of the corporation. Thus railroad, as well as trading and manufacturing corporations generally, have been held to possess such power. In *Chicago, Pekin & Southwestern R. R. Co. v. Town of Marseilles*, 84 Ill. 643 (1877), where an agreement by a railroad corporation to purchase its own stock was upheld, the court said, after citing cases:

"If, then, as in the cases above referred to, a bank may purchase and hold its own shares, no reason is perceived why a railroad corporation may not do the same thing, and the case of *The State v. Smith*, 48 Vt. 266 was the purchase of stock by the railroad company, and of shares of its own stock."

And such a purchase by a railroad corporation was sustained in *Leland v. Hayden*, 102 Mass. 542, 551 (1888); the case of *The State v. Smith*, 48 Vt. 266 was the purchase 643 (Oct., 1876); *State, ex rel. Page v. Smith*, 48 Vt. 266, 285 (1876).

IX.

RIGHT TO RELIEF AGAINST PURCHASE AS AFFECTED BY
DISTINCTION BETWEEN EXECUTORY AND
EXECUTED TRANSACTION.

In some instances relief has been allowed against a purchase, though the transaction has been completed by transfer of both the stock and the consideration therefor. Thus in *St. Louis Manuf. Co. v. Hilbert*, 24 Mo. App. 338 (1887) a corporation was held entitled to recover back property sold, for which its own stock had been received in payment. Compare as to the conditions of allowing the corporation relief against such a transaction, *Bank of San Luis Obispo v. Wickersham*, 99 Cal. 655 (1893). See also under VII as to relief allowed creditors.

But in some decisions is manifest a tendency to establish a distinction between an executory and an executed transaction, with reference to the allowance of relief. Thus in *Morgan v. Lewis*, 46 Ohio St. 1, 7 (1888) where the purchase was sustained, the court said :

"We should not lose sight of the fact that there was an executed transaction. The exchange—or the re-exchange, rather—had been made, possession of the furnace taken by Morgan, and retained by him for years before the transaction was questioned by any one. To this day it has remained free from direct attack. Certainly, the possession by Morgan of this property which had theretofore been in the possession of the company, was a circumstance proper to be considered with other facts in the case."

Citing *Coppin v. Greenlees & Ransom Co.* 38 Ohio St. 275. So in *Trevor v. Whitworth*, 12 L. R. App. Cas. 409, 420 (1887), where a claim for the purchase price was held unenforcible. *Re Dronfield Silkstone Coal Co.*, 17 L. R. Ch. Div. 76 (1880) was distinguished on the ground of the transaction involved in the case at bar being *inchoate*. See also p. 440. See also as to relief against executed contract, *Zulueta's Claim*, 5 L. R. Ch. App. 444 (1870).

X.

SUMMARY.

On the whole, our examination seems to justify the following statement of results:

Two inconsistent doctrines have obtained currency as to the legality of a purchase by a corporation of its own stock; one that it is inherently illegal, the other, that it is legal save under circumstances producing special injury.

The doctrine that it is inherently illegal prevails in England, and to a limited extent in this country. It rests on the ground that such purchase constitutes either a transaction beyond the authorized purposes of the corporation, or an unauthorized reduction of capital.

The doctrine that it is legal save under circumstances producing special injury to either (1) the corporation or continuing stockholders, or (2) existing creditors of the corporation, prevails generally in this country.

Frederick H. Clark.