shareholder in the future.[11] In the instant case no title was to pass until final payment, nor was the plaintiff to have any right to vote the shares, nor was any stock to be issued to him. Since plaintiff was not a shareholder, therefore, he should not be allowed to recover the money on the theory that it represented dividends, but he should be allowed to recover it on the implied promise of the corporation that it would allocate a sum of money to him which would be measured by the amount of profits. The amount with which plaintiff was credited on the books of the corporation would be good evidence as to what a dividend would have been had one been declared.[12]

G. M.

CORPORATIONS—LIABILITY OF STOCKHOLDER FOR SHARES ISSUED IN VIOLATION OF BLUE SKY LAWS—[Kansas].—The effect of participation in the affairs of a corporation on the rights and liabilities of a purchaser of stock sold in violation of the Blue Sky laws, though seldom considered by the courts, is important in view of the oft-quoted statement that such stock is void, or, in some jurisdictions, voidable at the purchaser's option.[1] In a recent case a trustee in bankruptcy of a corporation sued to recover from a stockholder the amount of an unpaid subscription. The Kansas Supreme Court stated, though the point was not raised by the pleadings, that as the defendant was an incorporator, director, treasurer and member of the executive committee, he could not avail himself of the defense of the company's noncompliance with the Kansas Securities Act.[2] The fact that the company was insolvent and that the defendant was so actively engaged in its affairs, of course, presented the case in its strongest light.

Except in the jurisdictions where sales in violation of the Blue Sky laws are valid,[3] a person who has merely contracted for the purchase of stock, without being active in the corporate business, may rely on the defense of illegality in a suit by a solvent corporation for the purchase price.[4]

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11. Stern v. Mayer, 166 Minn. 346, 207 N. W. 737 (1926).

12. Transport Co. v. Jones, 260 U. S. 747, 43 S. Ct. 248, 67 L. ed. 493 (C. C. A. 4, 1922); Hoffer Oil Corp. v. Carpenter, 34 F. (2d) 589 (C. C. A. 10, 1929).

1. Regan v. Albin et al., Golden Eagle Milling Co. v. Same, 26 P. (2d) 475, 476 (Cal., 1933) (void); Rice v. Allison, 229 Ill. App. 1 (1922) (voidable); 14 Fletcher, *Cyclopedia Private Corporations* (Rev. ed. 1932) sec. 6763. Even where the transaction is said to be *void*, the effect is merely to make it *voidable* on the part of the purchaser, since he may recover the consideration paid. Otten v. Riesener Chocolate Co., 82 Cal. App. 83, 254 Pac. 942 (1927).

2. Norton v. Lamb, 62 P. (2d) 1311, 1313 (Kan., 1936).

3. The view taken by these courts is that their state Blue Sky law is penal in its nature, in no way affecting the contract made in violation of the act. Warren People's Market Co. v. Corbett, 114 Ohio St. 126, 151 N. E. 51 (1926), criticized in Comment, 35 Yale L. J. 881 (1926); Watters & Martin v. Homes Corp., 136 Va. 114, 116 S. E. 366 (1923).

4. Witt v. Trustees' Loan & Savings Co., 33 Ga. App. 802, 127 S. E. 810 (1925); 14 Fletcher, *op. cit.*, sec. 6770.

Or, if he has already paid for the stock, he may rescind and sue the corporation or the agent who negotiated the transaction on the common count for money had and received.[5] Nor may creditors enforce the contract after the company's insolvency.[6]

In the few cases where courts have refused recovery against the corporation by the purchaser or have denied the defense of statutory noncompliance in a suit by the corporation or by creditors against the purchaser, they have relied on the doctrines of estoppel or ratification.[7] But in some instances it would seem that the courts have perverted the aim of the legislation from protection of an unwary public to penalizing the corporation, with all its resulting harshness.[8] Thus where a subscriber on a preincorporation contract attended a meeting for the purpose of acceptance or rejection of the charter, and, after its adoption, another meeting for amending the charter, was appointed on a committee to consider the problem, and voted in favor of the proposals in each instance, the majority of the court held he was not estopped from repudiating the contract.[9] And in *Reno v. American Ice Machine Co.*, where plaintiff was employed by defendant corporation in the direction and management of its business, attended stockholders' and directors' meetings during the time, and was well acquainted with the workings of the business for several years, the court allowed recovery of money deducted by the corporation from plaintiff's salary in payment of the stock, on the ground that the contract was void, and neither subsequent action on the plaintiff's part nor the corporation's subsequent compliance with the statute could affect its validity.[10] In an even more aggravated case, where defendants, who were promoters and later directors

5. Daniels v. Craiglow et al., 131 Kan. 500, 292 Pac. 771 (1930) (recovery allowed against officers of the corporation); 14 Fletcher, *op. cit.*, sec. 6766; see also Landwehr v. Lingenfelder et al., 249 S. W. 723 (Mo. App., 1923), allowing recovery against members of a syndicate having articles of association resembling the articles of agreement of a corporation.

6. Gill Prtg. Co. et al. v. Goodman, 224 Ala. 263, 139 So. 250 (1932); 14 Fletcher, *op. cit.*, sec. 6772; cf. In re American Aluminum Metal Products Co., 15 F. (2d) 234 (D. C. S. D. Cal., 1926). But subsequent compliance with the statutory requirements will bar the defense as against creditors of an insolvent corporation. Moore v. Moffatt et al., 204 Pac. 220 (Cal., 1922). And in Minnesota constitutional liability of shareholders of a corporation is enforceable by creditors upon insolvency, though there is no subsequent compliance with the Blue Sky law by the corporation. Webster v. U. S. I. Realty Co. et al., 170 Minn. 360, 212 N. W. 806 (1927).

7. Cox v. Hanson, 200 Wis. 341, 228 N. W. 510 (1930); Winfred Farmers Co. v. Smith, 47 S. D. 498, 199 N. W. 477 (1924); cf. Harvey v. Electric Refrigeration Corp. et al., 246 Mich. 235, 224 N. W. 443 (1929). Some of the elements of technical estoppel or technical ratification are often lacking. The courts really rely on equitable estoppel or estoppel *in pais*. 2 Williston, *Contracts* (1927) sec. 692.

8. For discussion of the policy behind the Blue Sky laws see Cook, "Watered Stock" — Commissions — "Blue Sky Laws" — Stock Without Par Value (1921) 19 Mich. L. Rev. 583, 590.

9. Flournoy v. Highlands Hotel Co., 170 Ga. 467, 153 S. E. 26 (1930).

10. 72 Cal. App. 409, 237 Pac. 784 (1925).

of a corporation, issued stock to themselves in violation of a permit requiring sales to be made for cash, and negotiated the stock to an innocent purchaser, the company was denied recovery for the purchase price.[11]

However salutary the effect of the Blue Sky laws, it is submitted that the courts should halt in carrying them to the logical extreme, and in cases where it is obvious that the purchaser, through participation in the company's affairs, has adequate knowledge of the objects and financial status of the enterprise, he should not be protected.[12] It would seem that the view taken in the instant case is wholly justified.[13]

S. J. B.

DOMESTIC RELATIONS—LIABILITY OF HUSBAND FOR WIFE'S FUNERAL EXPENSES—[Missouri].—The plaintiff filed a claim in the probate court against the estate of a deceased wife for services rendered at her burial. In denying recovery the court *held:* "An undertaker is not entitled to recover a wife's funeral expenses from the wife's estate, where the wife predeceased her husband and the husband's estate was ample to cover expenses."[1]

At common law a husband alone is bound to pay for the burial of his deceased wife in a manner suitable to his station in life,[2] and her estate is not liable for such expenditures.[3] The courts have explained this obligation by referring to the husband's duty to supply his wife with necessaries[4] and to his right to recover damages against anyone who wrongfully interferes with her body.[5]

In most jurisdictions, the administration statute provides that funeral expenses shall have priority over all other claims.[6] The effect of such a provision upon the liability of the husband for his wife's burial expenses

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11. Coast Amusements Inc. v. Stineman et al., 115 Cal. App. 746, 2 P. (2d) 447 (1931). But the Supreme Court of South Dakota took a more liberal view in holding that participation in stockholders' meetings and receipt of dividends for several years estopped the purchaser in a suit by the corporation on a note given in payment for the stock. Winfred Farmers Co. v. Smith, 47 S. D. 498, 199 N. W. 477 (1924).

12. Mere connection with the corporation in a minor capacity, of course, should work no estoppel. Otten v. Riesener Chocolate Co., 82 Cal. App. 83, 254 Pac. 942 (1927) (night watchman); Mac Donald v. Reich & Lievre, 100 Cal. App. 736, 281 Pac. 106 (1929) (saleswoman).

13. Norton v. Lamb, 62 P. (2d) 1311 (Kan., 1936).

1. Kent v. Knight, 98 S. W. (2d) 318 (Mo., 1936).

2. Smyley v. Reese, 53 Ala. 89, 25 Am. Rep. 598 (1875); Sears v. Gidday, 41 Mich. 590, 2 N. W. 917, 32 Am. Rep. 168 (1879).

3. Watkins v. Brown, 85 N. Y. Supp. 820 (1903); Long v. Beard, 20 Ky. Law Rep. 1036, 48 S. W. 158 (1900).

4. Scott v. Carothers, 17 Ind. App. 673, 47 N. E. 389 (1897).

5. Kent v. Knight, supra, note 1, l. c. 318.

6. R. S. Mo. 1929, sec. 182, which deals with allowances and classification of demands against a decedent's estate; Ill. Smith-Hurd, Rev. Stats. of 1935, chap. 3, sec. 71; Crawford & Moses, Digest of the Stats. of Ark. (1921) sec. 97; Carroll's Ky. Stats. (1930) sec. 3868; Williams, Shannon, Harsh, Code of Tenn. (1932) sec. 8286.