The Prohibition against Financial Assistance for the Purchase of Shares

(1) The genesis of the prohibition

When in 1926 the Committee[1] appointed to consider Company Law Amendment in the United Kingdom presented its Report,[2] it expressed its particular dissatisfaction with a practice described in the Report as "highly improper", which was at that time said to have made its appearance in recent years. A "typical example" referred to by the Report was that of a syndicate which–

> agrees to purchase from the existing shareholders sufficient shares to control a company, the purchase money is provided by a temporary loan from a bank for a day or two, the syndicate's nominees are appointed directors in place of the old board and immediately proceed to lend to the syndicate out of the company's funds (often without security) the money required to pay off the shares.[3]

Having observed that the company thus provided money for the purchase of its own shares, the Report continued:-

> Such an arrangement appears to us to offend against the spirit if not the letter of the law which prohibits a company from trafficking in its own shares and the practice is open to the gravest abuse.[4]

There does indeed seem to be some doubt whether a transaction of the kind described by the Committee fell within the purview of the existing rules relating to maintenance of company capital and there have been conflicting decisions on the subject.[5] In the result, the Committee's recommendation on this point[6] was adopted by the enactment, in s. 45 (i) of the Companies Act 1929, of a provision that no company should "whether directly or indirectly and whether by means of a loan guarantee or the provision of security or otherwise give any financial assistance for the purchase of or in connection with a purchase made or to be made by any person of any shares in a company or where the company is a subsidiary in its holding company." The section provided a penalty for infringement and, in consequence of the decision in 1942 in *Re V.G.M. Holdings Ltd.*[7] that the prohibition was limited to the *purchase* of shares already issued, the section was amended in 1948,[8] so as to extend it to subscription for, as well as purchase of, shares in the company. It is substantially in this form that the provision now appears as s. 67 of the Uniform Companies Act[9].

1. Under the chairmanship of Mr. Wilfred Greene K.C. (later to become Lord Greene M.R.).
2. *Report of the Company Law Amendment Committee* (1926; Cmd. 2567).
3. Report, para. 30; see also *Re V.G.M. Holdings Ltd.* [1942] Ch. 235, at p. 239, *per* Lord Greene M.R.
4. *Ibid.*
5. See *Lorang* v. *R.* (1951) 22 Cr.App.R. 167, and contrast *Durack* v. *Western Australian Trustee Executor & Agency Co. Ltd.* (1944) 72 C.L.R. 189, at p. 202 *per* Rich J; at pp. 219–220, *per* Williams JJ.
6. Report, para. 31.
7. [1942] Ch. 235.
8. U.K. Companies Act 1948, s. 54.
9. See Uniform Companies Act (U.C.A.), s. 67 (1).

Ever since its introduction in 1929 there have been expressly exempted from the operation of the section three forms of transaction which, stated in abbreviated form, authorise the provision of financial assistance:[10] (a) in the ordinary course of a money-lending business conducted by the company;[11] (b) to trustees of a scheme for the purchase of or subscription for fully paid shares to be held for the benefit of employees, including salaried directors; and (c) by the making of loans to persons (other than directors) bona fide in the employment of the company or its subsidiaries with a view to enabling those persons to purchase[12] fully paid shares in the company to be held beneficially on their own behalf.

With these exceptional cases the present account is not immediately concerned, the purpose of this paper being to examine the scope of the statutory prohibition itself, its operation and effect, and to attempt to assess the extent to which it has achieved the object contemplated by its framers.

(2) Scope of the prohibition

Section 67 has proved far from easy to interpret and apply. To a degree, it has been with the consequence of its breach, rather than with its actual applicability or inapplicability to particular circumstances that the difficulty has arisen. But even the scope of the prohibition is by no means easy to define. Few problems seem to have been encountered in the case of a straightforward loan of money either to an intending subscriber for shares direct from the company,[13] or to a purchaser of shares from some existing shareholder in the company,[14] or to the shareholder himself to enable him to lend the money to the intending purchaser.[15] All these instances are within the ambit of the section, as also is the type of transaction involving the use of "bridging" finance, of the kind described by the Committee in its Report as typical,[16] as well as the case where it is made a condition of the purchase of shares from an existing member that the purchaser will secure payment of the purchase price by a charge over the assets of the company.[17] On the other hand, it is necessary that the transaction should involve a purchase or subscription in the true sense, for an agreed division of assets, including shares, jointly owned by husband and wife is not within the section,[18] and it seems that s. 67 does not touch an arrangement whereby the company guarantees the repayment of instalments of shares agreed to be purchased under a contract which is subsequently rescinded by mutual consent, the *ratio* of the decision being that those whose obligation to repay was guaranteed had never purchased any shares.[19]

Section 67 makes express mention of loan, guarantee and the provision of

10. See s. 67 (2).
11. See, on this exemption, *Steen* v. *Law* [1964] A.C. 287 (P.C.).
12. But not subscribe for: this seems to be a legislative oversight, see *Mudge* v. *Wolstenholme* [1965] V.R. 707, at pp. 709–710, *per* O'Bryan J.
13. *Mudge* v. *Wolstenholme* [1965] V.R. 707.
14. *Dressy Frocks Pty. Limited* v. *Bock* (1951) 51 S.R. (N.S.W.) 390. Cf. also *Cooper* v. *Sandiford Investments Ltd.* [1967] 1 W.L.R. 1351, where the purchaser borrowed from bankers and repaid the loan out of moneys lent by the company whose shares were being purchased.
15. *Shearer Transport Co. Pty. Ltd.* v. *McGrath* [1956] V.L.R. 316.
16. *Selangor United Rubber Estates Ltd.* v. *Cradock* (*No. 3*) [1968] 1 W.L.R. 1555.
17. *Karoo Auctions* (*Pty.*) *Ltd.* v. *Hersman* 1951 (2) S.A. 33 (E.D.L.D.); *South Western Mineral Water Company Ltd.* v. *Ashmore* [1967] 1 W.L.R. 1110; *Thibault* v. *Central Trust Company of Canada* [1963] S.C.R. 312, affirming (1962) 33 D.L.R. (2d) 317.
18. *Harrison* v. *Harrison* 1952 (3) S.A. 417 (N.P.D.)
19. *Pires* v. *American Fruit Market* (*Pty.*) *Ltd.*, 1952 (2) S.A. 337 (T.P.D.); cf. also *Re Galpin, ex parte Chowilla Timber Supply Co. Ltd.* (1967) 11 F.L.R. 155 (Fed. Bkcy. Ct.)

security, but this is not an exhaustive reference, as is recognized by the terms of the section itself: the provision of financial assistance may take place "otherwise", and this term is not to be read down by reference to the words which precede it.[20] In *Re V.G.M. Holdings Ltd.*,[21] directors of the company, who had taken 20,000 shares of £1 each, were required to pay calls totalling £16,000. It was arranged that the principal company buy the share capital of an associated company for £8,000 and make a loan to that associated company of £7,500. The associated company then purported to pay debts of £16,000, said to be owing by it to the directors, who applied this payment in discharge of the calls on the shares issued by the principal company. The shares in the associated company were in fact valueless, and Lord Greene M.R. had no difficulty in concluding that the sum of £16,000:–

> was provided by the company by way of financial assistance, because whether the company provides the money by way of gift or by way of loan or by buying assets from the person who is purchasing the shares at a fraudulent overvalue, all those transactions . . . . . would fall within the phrase 'financial assistance'.[22]

Likewise, in *E.H. Dey Pty. Ltd.* v. *Dey*,[23] an agreement for the sale to purchasers for £12,440 of all the issued share capital in a company provided that a sum of £5,492, due to the company from one of the vendors, should be treated as paid to the company and that the purchase price of the shares should be correspondingly reduced by an equal amount. It was held that the transaction fell within the prohibition in s. 67, which was directed against the provision of financial assistance not only to the actual purchaser of the shares but to any person, and which in the instant case had enabled the defendant to ask or accept a lower price for his shares than would have been the case had he been required to pay his debt of £5,492 to the company.

Cases of the latter sort raise the question whether the inclusion, in a contract for the sale of shares, of a term requiring payment or securing of an existing indebtedness on the part of the company to the share vendor amounts to the giving of financial assistance within the meaning of s. 67. The point is devoid of authority in both England and Australia but has arisen on a number of occasions under the South African Companies Act, which contains a provision in terms which are virtually identical with those of s. 67.[24] In *Gradwell (Pty.) Ltd.* v. *Rostra Printers Ltd.*[25] a contract between Rostra Printing Limited and one Crowden for the sale to the latter (Crowden) of all the shares in Printing House Limited, a subsidiary of Rostra, provided (i) that the only liabilities of the company Printing House Limited comprised a sum of £20,225 owing on first mortgage to a building society and a loan account of £40,288 due to the vendor Rostra which was also to be acquired by Crowden; (ii) that the consideration for the acquisition of both the shares and loan account should be £42,500, less the sum of £20,255 owing on the mortgage; and (iii) that the sale should be subject to the ability of the purchaser Crowden to arrange a charge over the assets of Printing House for a loan of £30,000 to be applied in reduction of the price payable by him. In the Transvaal Provincial Division of the Supreme Court

20. *E.H. Dey Pty. Ltd.* v. *Dey* [1966] V.R. 464, at p. 469, *per* McInerney J.
21. [1942] Ch. 235.
22. *Ibid.*, at p. 240: *cf.* also *Albert* v. *Papenfus* 1964 (2) S.A. 713 (E.C.D.)
23. [1966] V.R. 464.
24. Companies Act 1926 (as amended), s.86 *bis*.
25. 1959 (4) S.A. 419; followed in *Karnowsky* v. *Hyams* 1961 (2) S.A. 368 (T.P.D.)

the conclusion was regarded as "inescapable" that the purpose of the transaction was to provide, directly or indirectly, financial assistance for the share purchase;[26] but on appeal the decision was unanimously reversed by the Appellate Division.[27] In delivering the judgment of that court, Schreiner J.A., whilst accepting that the purpose was to help the purchaser (Crowden) to buy the shares by reducing the amount of the loan account to be purchased,[28] said:-

> the paying off of an existing debt seems to be decidedly more difficult to bring within the notion of giving financial assistance. The payer's assets and liabilities are put into a different form but the balance is unchanged. And the same applies to the final position of the payee. Here the company would have no more and no less after the completion of the transaction than before. And the same would apply to Rostra. The company would owe more to its mortgagee and correspondingly less to Rostra. The price to be paid by Crowden would be less by the difference in the value of the assets to be acquired. Its final position would be unchanged—only its investment would be smaller. Where there is an anticipation in the date when the debt becomes due and payable the position may possibly be different, but where the debt is presently due and payable and the debtor can have no answer to the creditor's demand for payment, it would be straining the language to hold that by paying his debt the debtor gives the credit financial assistance.[29]

The decision in *Gradwell Pty. Ltd.* v. *Rostra Printing Limited*[30] has been the subject of adverse comment by Mr. Ian B. Murray,[31] who makes the point that the judgment of Schreiner J.A. is wrong in assuming that the company's financial position was not adversely affected by the transaction, which, on the contrary, would necessarily reduce the company's liquidity by virtue of the creation over its assets of the charge contemplated by the contract.[32] The criticism is, it is submitted, well founded, as is Mr. Murray's suggestion that the underlying basis of the statutory prohibition is that the resources of a company, whether pecuniary or rights of property, must not be drawn upon or utilised to assist any person to buy or subscribe for shares in the company.[33] It follows that a transaction which provides for the sale of shares, and also for the payment or securing of an existing loan account by resorting to the assets of the company, ought in principle to be regarded as involving the provision of financial assistance within the meaning of s. 67.[34]

If this reasoning were accepted it would follow that a transaction providing for the sale of shares, and also for the payment or securing of an existing loan account by resorting to the assets of the company, ought in principle to be regarded as involving the provision of financial assistance within the meaning of s. 67. However, the decision in the South African case does not stand alone in rejecting this approach. In *Olafson* v. *Twilight Cariboo Lodge Ltd.*[35] the

26. *Sub. nom. Crowden Products (Pty.) Ltd.* v. *Gradwell (Pty.) Ltd.* 1959 (1) S.A. 231 (T.P.D.)
27. Equivalent in status to the High Court of Australia.
28. 1959 (4) S.A. 419, at p. 426.
29. *Ibid.*
30. 1959 (4) S.A. 419.
31. See 77 *South African Law Journal* 17; 246; 381; 78 *South African Law Journal* 231.
32. 77 *South African Law Journal* at p. 382.
33. *Ibid.*
34. The South African decisions on this point are now in conflict, see *Karnowsky* v. *Hyams*, *supra*, and cf. *Straiton* v. *Cleanwell Dry Cleaners (Pty.) Ltd.* 1960 (1) S.A. 355 (S.R.). See also *Olafson* v. *Twilight Cariboo Lodge Ltd.*, *infra*, n. 35.
35. [1966] S.C.R. 726.

appellants sold for a total of $225,000 their ten $1 shares in the $10,000 authorised capital of a company, together with their loan accounts amounting to some $142,369, the price being payable as to $65,000 in cash and the balance of $160,000 in instalments secured by a mortgage over the assets and undertaking of the company. The Supreme Court of Canada, reversing a decision of the Court of Appeal of British Columbia,[36] held that the mortgage did not contravene a statutory prohibition[37] in terms indistinguishable from those contained in s. 67 of the Uniform Companies Acts in Australia. Unfortunately, the rather sparse reasoning of the Supreme Court gives little guidance as to why the transaction was not to be regarded as offending the relevant section, beyond an indication[38] that the assignment of the shareholders' loans may have been the decisive factor. Moreover, the notion that the statutory prohibition is directed substantially against the utilization of company assets in order to assist the purchaser is difficult to reconcile with the Western Australian decision in *Shilling* v. *Garden Island Service Co. Pty. Ltd.*[39] The somewhat unusual facts of this case were that a shareholder, who had agreed to sell his shares to purchasers in return for a price payable in instalments, upon default by the purchasers resold the shares (as he was entitled to do under the agreement) and assigned to the company the benefit of the contract, together with the right to recover the balance of purchase price owing thereunder. For the privilege of obtaining this right to sue for what remained of the purchase price of its own shares the company paid to the vendor a sum in cash which was admittedly substantially less than that which was owing to the vendor. In rejecting an argument that the company's right of action against the purchasers was infected with illegality arising from contravention of the prohibition against "dealing in" its own shares, Wolff C.J. said:-

> Paragraph (a) [of section 67] will cover, *inter alia,* a case where a company, which is the subject of a takeover bid, advances funds under its investment powers to recoup a syndicate which has borrowed money to purchase shares to gain control. Many transactions which are purchases of shares could also amount to dealing in shares. But 'dealing in' shares could cover a scheme of buying and selling by a company of its own shares or a scheme which could possibly go the length of 'bulling' and 'bearing' on the stock market or it could cover promoting and carrying out schemes in concert with shareholders whereby the company as agent for the shareholders and in their names turns over shares in the market . . . . .
>
> Mr. Viner argues that the employment of the company's funds in this way is really an interference with the capital structure of the company but one might as well say that the use of the liquid assets in a company to buy trading stock constitutes an interference in the capital structure. Here the share structure was left intact and I hold that the transaction was not a breach of s. 67.[40]

Whilst it is true that the "capital structure" of the company was not affected by the transaction, there is little doubt that resources of the company were utilized "in connection with" a share purchase, even if such assistance was given to the share vendor at a stage only after the original sale had fallen through.

36. (1966) 55 W.W.R. 385.
37. Companies Act, 1960 (R.S.B.C., c.67, s. 152).
38. [1966] S.C.R. 726, at p.731 *per* Ritchie J.
39. [1967] W.A.R. 147.
40. [1967] W.A.R. at p.150.

Both this and the other decisions mentioned above make it unlikely that any clear principle, such as that suggested by Mr. Murray, will prevail in the construction of the prohibition laid down by s. 67.

(3) Consequences of breach of the prohibition

If there are problems in defining the scope of the prohibition in s. 67, the difficulty of determining the effects of a breach of that prohibition has proved much more serious. According to accepted principles, an agreement to do an act prohibited by statute is itself illegal and unenforceable,[41] as also are collateral transactions, such as the giving of security for performance of the obligation contracted.[42] Logically, this should have the result that an agreement in contravention of s. 67 to give financial assistance, in the form of a loan, guarantee, or the provision of security, render both the agreement and such loan, guarantee, or security unenforceable by either party to the agreement. This also means that the company itself would be unable to sue upon the agreement, but the courts initially recoiled from the process of reasoning which produced such an unexpected result.[43] Nevertheless, it now seems settled that a loan, guarantee, or security given in breach of s. 67 is unenforceable even by the company.[44]

Unfortunately the judgments also manifest a tendency to describe the transaction as not only illegal and unenforceable but also void.[45] One may be excused for thinking that legal policy is sufficiently served by refusing to enforce the agreement without condemning it as wholly void. Indeed, to do so tends to produce a certain logical difficulty in the construction of the section. For if, for example, the security given in contravention of s. 67 is void, it then becomes arguable that the financial assistance contemplated by the section has not been effectively provided, and hence that the section has not been infringed.[46] An argument along these lines was apparently accepted by Roxburgh J. in *Victor Battery Co. Ltd.* v. *Curry's Limited*,[47] but, by almost universal accord, the decision now seems to be regarded as erroneous on the sensible ground that it is by no means impossible for an invalid security to provide financial assistance for the acquisition of shares, at least at the time the transaction takes place.[48] A further logical result of treating the whole transaction as void is that it may well prejudice the rights of innocent purchasers for value who acquire the subject matter of the agreement (whether it be shares or security) without notice of the illegality, and it may have been this consideration which induced O'Bryan J. in *Mudge* v. *Wolstenholme*,[49] to adopt the view that a transaction infringing

41. *Marks* v. *Jolly* (1938) 38 S.R. (N.S.W.) 351, at p. 357.
42. *See e.g. Rich Investments Pty. Ltd.* v. *Calderon* [1964] N.S.W.R. 709.
43. See *Spink (Bournemouth) Limited* v. *Spink* [1936] Ch. 544, where the offending term was held to be severable from the remainder of the agreement; *Victor Battery Co. Ltd.* v. *Curry's Ltd.* [1946] Ch. 242.
44. See *Dressy Frocks Pty. Ltd.* v. *Bock* (1951) 51 S.R. (N.S.W.) 390 (loan). In *Essex Aero Ltd.* v. *Cross* (1958 unreported), see [1968] 1 W.L.R. at p. 1657, the Court of Appeal in England confirmed that s.67 prevented even the company itself from enforcing the transaction.
45. *Dressy Frocks Pty. Ltd.* v. *Bock, supra*, at pp. 393, 399; *E.H. Dey Pty. Ltd.* v. *Dey, supra*, at p. 470; *Re Galpin Ex Parte Chowilla Timber Supply Co., supra*, at p. 161, *Re Ferguson, ex parte E. N. Thorne & Co. Pty. Ltd.* (1969) 14 F.L.R. 311, at p. 314.
46. Cf. counsel's argument in *Mudge* v. *Wolstenholme* [1965] V.R. 707.
47. [1946] Ch. 242.
48. See e.g. *Dressy Frocks Pty. Ltd.* v. *Bock, supra*, at p. 396; *Selangor United Rubber Estates Ltd.* v. *Cradock (No. 3)*, [1968] 1 W.L.R. 1555, at p. 1658.
49. [1965] V.R. 707. *Cf.* also *South Western Mineral Water Company Ltd.* v. *Ashmore* [1967] 1 W.L.R. 1110, where Cross J. directed restitution in the case of an agreement in breach of s.67.

s. 67 should not be regarded as wholly void and of no effect. His Honour considered that a person who became a shareholder in breach of s. 67 remained a member of the company at least until his name was removed from the register, and so would be liable for calls which might be made on the shares during the period of his membership.[50] Attractive though this solution may appear to be, it unfortunately does not provide for the case where the subject-matter of the illegal contract comprises not shares but a security, such as a floating charge which has been assigned to an innocent purchaser for value, and which, if void, would destroy his rights against the company.

In an attempt to avoid some of these irrational consequences of s. 67 the courts have sometimes been astute to discover means of assisting the company to enforce a claim arising out of an agreement to provide financial assistance in the purchase of shares. In *Shearer Transport Ltd.* v. *McGrath*[51] the company was held entitled to recover from the defendant a sum of money paid to him by the company for the purpose of enabling him to lend it to one who proposed to buy his shares in the company. This course was justified on the ground that, since the whole loan transaction was illegal and ultra vires the company, the payment to the defendant was recoverable in the character of moneys paid to the plaintiff upon a consideration which was illegal and void. By a somewhat similar process of reasoning it has been held that the taint of illegality does not affect the liability as constructive trustee of a recipient of moneys paid in breach of s. 67,[52] and it is now settled by the highest authority that a director who disposes of money or other assets of the company contrary to the section is guilty of misfeasance or breach of trust for which in winding up he may be held personally liable.[53]

(4) Conclusions

Section 67 has been condemned (and, it is submitted rightly condemned) as exceptionally widely drawn and difficult to interpret,[54] and there seems little doubt that the prohibition which it imposes is honoured more in the breach than in the observance.[55] If, as has been forcibly suggested, the essence of the section is that corporate resources should not be utilised for the purpose of assisting the acquisition of company shares,[56] then the statutory prohibition has almost certainly failed to achieve its purpose. For even if *Gradwell's* case[57] can be said to have been wrongly decided, the most prominent consequence of s. 67 is to render the offending agreement illegal, unenforceable and perhaps even void, thereby depriving the company of the means of enforcing a loan of money for the prohibited purpose and so depleting the very resources with the statutory

50. [1965] V.R. 707, at pp. 715, 717.
51. [1956] V.L.R. 316.
52. *Selangor United Rubber Estates Ltd.* v. *Cradock (No. 3)* [1968] 1 W.L.R. 1555.
53. *Steen* v. *Law* [1964] A.C. 287 (P.C.), affirming *Re International Vending Machines Pty. Ltd.* (1961) 80 W.N. (N.S.W.) 465; *Re Toowoomba Welding Works Pty. Ltd. (No. 2)* [1969] Qd. R. 337, where liability was imposed although the directors were ignorant of the statutory prohibition. *Cf. Curtis' Furnishing Stores Ltd.* v. *Freedman* [1966] 1 W.L.R. 1219. See also *Re Ferguson, Ex Parte E. N. Thorne & Co. Pty. Ltd.* (1969) 14 F.L.R. 311 where it was held that a director was under an obligation to repay money which he had, in breach of his fiduciary duty as director, caused the company to lend in contravention of s.67.
54. 53 *The Accountants Journal* (1961), at pp. 291–2, set forth in Patterson & Ednie: *Australian Company Law*, at p. 274.
55. Patterson & Ednie, *op. cit.* at p. 274.
56. See text to n. 33 above.
57. *Gradwell Pty. Ltd.* v. *Rostra Printers Limited, supra.* n. 25.

provision is intended to protect.[58] It is a fair criticism of the section that its drafting or interpretation fails sufficiently to distinguish between, on the one hand, a transaction which involves a disposition of corporate assets (such as the payment of money[59] or creation of a charge[60]) or which increases the liabilities of the company, such as a guarantee; and, on the other hand, a simple contract for the issue of shares which are paid for by debiting the purchaser's loan account in the books of the company.[61] Transactions of the latter sort have been brought within the ambit of s. 67 only by the extension of the statutory prohibition to include subscription as well as purchase, but it is difficult to appreciate what detriment is suffered by the company in such cases. It is true that the issue of new shares involves a disposition of the company's unissued share capital, but nominal share capital is a commodity in plentiful supply, and it may be that in such cases s. 67 does no more than deter the company from increasing its assets by the amount of the indebtedness of the purchaser of such shares. And it is nothing to the point to say that the section creates a personal liability on the part of directors who misapply corporate assets, for in most if not all of the reported cases the errant director would have been personally liable on other grounds quite independent of s. 67.[62]

The truth is that s. 67 in its present form has done little but provide defaulting purchasers of or subscribers for shares with a rather technical means of escaping their contractual obligations.[63] And if the underlying policy of the prohibition is to prevent companies from, in effect, trafficking in their own shares, then the sensible course would be to assimilate such transactions to a reduction of capital, for the efficacy of which the approval of the court is required by s. 64 of the Act. This is, indeed, not far removed from the recommendations of the Jenkins Committee, which, whilst retaining the statutory prohibition, would render the offending transaction voidable at the instance of the company, would require the registration of contracts falling within the terms of the section, and would enable dissenting shareholders to apply to court for an order which would prevent the transaction from being carried into effect.[64] In any future consideration of the reform of company law in Australia, these proposals obviously deserve close attention.

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58. As in *Dressy Frocks Pty. Ltd.* v. *Bock* (1951) 51 S.R. (N.S.W.) 390.
59. As in *Shearer Transport Pty. Ltd.* v. *McGrath* [1956] V.L.R. 316.
60. As in *Victor Battery Co. Ltd.* v. *Curry's Ltd.* [1946] Ch. 242.
61. As in *Mudge* v. *Wolstenholme* [1965] V.R. 707.
62. This is particularly true of the examples given by Lord Greene in *Re V.G.M. Holdings Ltd.*, *supra*, n. 22, where in fact the director was held liable for misfeasance even though s.67 was not infringed.
63. Most of the decided cases fall into this category: in many the action has been for recovery of commission by the agent who effected the sale.
64. For an account of these recommendations, see Patterson & Ednie, *op. cit.*, at p. 275.

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