1916). Moreover, the acts of directors are generally presumed to be regular and in good faith until it is shown they are not. *Borg v. International Silver Co.*, 11 F. (2d) 147 (C.C.A. 2d 1925); *Robinson v. Pittsburgh Oil Refining Corp.*, 14 Del. Ch. 193, 126 Atl. 46 (1924); *Mayger v. St. Louis Mining & Milling Co.*, 68 Mont. 492, 219 Pac. 1102 (1923).

If the decision in the principal case is to be justified at all, it must be either on the ground that the officers in agreeing between themselves to accept a reduction of salary, made a contract on behalf of the corporation which the corporation accepted; *Snow v. Griesheimer*, 220 Ill. 106, 77 N.E. 110 (1906); *Jones & Dommersnas Co. v. Crary*, 234 Ill. 26, 84 N.E. 651 (1908); or that the corporation was the third party beneficiary of a contract between the officers. *Lawrence v. Oglesby*, 178 Ill. 122, 52 N.E. 945 (1899).

Corporations—Liability of Holding Company Shareholders for Statutory Assessment on Insolvent Subsidiary Bank Stock—[Federal].—The Detroit Bankers Company, a holding company, was organized to hold the shares of a national bank and several state banks. In order to centralize control the voting non-par shares were issued to the officers of the various banks for cash. The remaining shares, which were non-voting for five years, were issued to the stockholders of various banks in exchange for their stock. The charter provided: "The holders of stock of this corporation shall be individually and severally liable (in proportion to the number of shares held by them respectively) for any statutory liability imposed on this corporation by reason of ownership of shares of capital stock of any bank .... and the stockholders .... severally agree that such liability shall be enforced in the same manner as statutory liability may now or hereafter be enforceable against stockholders of banks under the laws of the United States or the State of Michigan." The only assets of the holding company were these bank stocks, so that upon failure of the subsidiary banks, the holding company became insolvent. A suit was brought to enjoin the receiver of the national bank from enforcing the statutory liability against the stockholders of the holding company. *Held*, the stockholders must pay the assessment directly to the national bank receiver. *Barbour v. Thomas*, 7 F. Supp. 271 (E.D. Mich. 1933).

The court in the principal case relied on the contractual relation created by the charter provision. Therein, the stockholders of the holding company assumed a liability for the benefit of the creditors of the subsidiary banks as third party beneficiaries. By allowing the receiver of the subsidiary bank to recover directly from the holding company stockholders, the needless expense and delay of collection by the holding company receiver was avoided, and the full benefit of the assessment was given to those whom the statute intended to protect.

The court, however, suggested that the same result would have been reached by a disregard of the corporate entity of the holding company had there been no provision for stockholders' liability in the holding company charter and stock certificates. The statement is often made that where an attempt has been made to evade a statute by means of incorporation, the corporate fiction will be disregarded. *U.S. v. Lehigh Valley Ry. Co.*, 220 U.S. 257 (1911); 1 Fletcher, Cyclopedia of the Law of Corporations (perm. ed. 1931), § 45; Wormser, Disregard of the Corporate Fiction and Allied Corporate Problems (1929), 40, 63. This generalization, however, gives no criteria for determining whether an evasion has been attempted in a particular case. It has been held that the creation of a "family" corporation to hold bank stock would not permit the beneficial owners to avoid the statutory liability. *Corker v. Soper* 53 F. (2d) 190 (C.C.A. 5th 1931); 45 Harv. L. Rev. 580 (1932). There, since, the holding did not consist of a majority of the shares, obviously no centralization of control of the company was intended. The parent company in the principal case can be distinguished in that its primary purpose was to centralize control. In both cases, however, the fact that the holding companies were inadequately financed to meet the contingent liability attaching to bank stock can be considered as indicating an attempted evasion of the statute. To determine when a holding company is so inadequately financed as to justify a disregard of the corporate entity to the extent of holding its stockholders personally liable, its assets must be carefully scrutinized. Since the purpose of the statute is to provide a "secondary" protection to depositors, equalling the stock of the depositary bank, it should not be considered an evasion if the assets of the holding company are sufficient to satisfy that contingent liability on the bank shares held. Thus, where a holding company has a wide and diversified portfolio consisting of many strong operating companies amply sufficient to satisfy any contingent liability on bank stock held, there should be no reason to hold its shareholders personally liable. And it is conceivable that a parent company, whose sole assets are stocks in a large number of subsidiary banks widely distributed geographically, would be adequately financed to protect creditors of failing banks by converting some of the stocks of their solvent banks into cash. But, as a practical matter, since the double liability clause would render a bank-stock holding company insolvent whenever it became necessary to pay an assessment on more than one-half the shares held, there is always present a real risk that such a company will have inadequate assets.

The difficulty of determining whether or not there is adequate financing and the desire to effectuate as completely as possible the protection to bank depositors intended by the statute may well justify a definite rule that, whenever the assets of a holding company consist solely of bank stocks, its shareholders assume the contingent statutory liability.

It is perhaps unfortunate that the courts in such cases rationalize their decisions in terms of disregarding the corporate entity. When it is considered that the issue is primarily one of statutory policy, to speak of disregarding the corporate entity is not only unnecessary, but tends to obscure the real issue. See Douglas and Shanks, Insulation from Liability through Subsidiary Corporations, 39 Yale L. J. 193, 212 (1929).

Criminal Law—Merger of Conspiracy into Completed Offense—[New Jersey].—Defendant, indicted for conspiracy to commit embracery, defended on the ground that the crime of embracery having been committed, the conspiracy had merged into the completed crime. *Held*, the conspiracy did not merge into the completed offense. *State v. Simon*, 113 N. J. L. 521, 174 Atl. 867 (1934).

At common law the doctrine of merger prevented conviction of a misdemeanor where a felony arising out of the same acts was proved. *Rex v. Cross*, 1 Ld. Raym. 711 (K.B. 1701); *Lutterell's Case*, 6 Mod. 77 (Q.B. 1703). The courts probably applied this rule in order to secure for the king the property forfeited on conviction of a felony, by forcing the prosecutors to try the felony. Clark, Criminal Law (Mikell's 3d ed. 1915), §§ 9, 10; 1 Wharton, Criminal Law (12th ed. 1932), § 26. Moreover, persons indicted for misdemeanors had certain advantages in trial, such as the rights to have counsel, a