

The plaintiff dealt with Ostrom, and not with the defendants.

The memorandum of settlement which Mr. Wilson refused to sign is dated the 4th May, 1906. It was signed by counsel for the plaintiff and Ostrom, and not by counsel for the present defendants, nor by any one on their behalf; and it was still open to the plaintiff, upon Mr. Wilson declining to be a party to it, to withdraw from the settlement and continue his action. He did not, however, adopt that course, but apparently was satisfied to look to Ostrom. The latter's obligation was to deliver to him 25 fully paid-up shares of stock in the defendant company, but this he could not do unless he was possessed of such shares, and it is undisputed that he was not.

The issue of the certificate was not the act of the defendants, for, although it bore the defendants' seal and the signatures of Ostrom, managing director, and of one of the vice-presidents, they had no authority from the defendants to issue such an instrument, and the defendants had no knowledge that it was issued. Care was even taken that the stub in the certificate-book was left blank. The certificate was (to adopt the expression of Lord Macnaghten in *Ruben v. Great Fingall Consolidated*, [1906] A.C. 439, at p. 444), concocted and the vice-president's signature to it improperly procured by Ostrom for his own purposes. And, as was asked in that case (p. 444), so it may be in this: "Then how can the company be bound or affected by it?" The directors have never said or done anything to represent or lead to the belief that this was the company's deed. Without such a representation, there can be no estoppel.

This is not a case of a person, claiming under a transfer from a supposed shareholder, being given a certificate of ownership, upon the faith of which he acted to his prejudice. In such a case the giving of the certificate is the act of the company, knowingly done with the intention of enabling the receiver to act upon it, and he does act upon it to his prejudice. These elements are lacking in this case. In the face of Mr. Wilson's attitude, which in itself shewed that the defendants were not proposing to give the plaintiff anything, the plaintiff should not have allowed his action to be dismissed until he was satisfied of the truth of what it is now made plain was untruly stated in the unauthorised certificate.

The appeal should be dismissed.

MEREDITH, J.A., for reasons stated in writing, agreed that the appeal should be dismissed.