

receive, if there was a gain on the transaction, one-half the difference between the purchase price and the selling price.

I see nothing inconsistent with that having been the real nature of the arrangement, in the circumstance of the telegram of 27th May, 1902, from Rowley, the manager of the Elgin Co., to Wallace, the president of the Atlas Co., "you have authority to use your own discretion in purchasing," or in the bought notes being made out by Ames & Co. (a firm of Toronto stock brokers, in which Wallace was a partner) in the name of the Elgin Co., or in the fact of the debenture being issued when, as it is said, there was no need for it, because money enough to buy the shares was lying at the credit of the Elgin Co. in the hands of the Atlas Co., or in the cheque which was issued by the Elgin Co. being for exactly the sum for which the shares had been bought, or in the fact that the debenture was for \$55,000. On the contrary, every one of these circumstances is, in my opinion, quite consistent with the real transaction having been what, as I have said, I think it was, or, if apparently not so, is as readily explained. . . .

It may well be that the reason for the issue of the debenture was in some sense the fact that the Elgin Co. had not the power to buy the shares, but only, I think, in the sense that, because that was impracticable, it was found necessary not that in form but that in substance the transaction should be a purchase by the Atlas Co. of the shares on their own account, and at their own risk, and a loan to them by the Elgin Co. of the amount required to buy the shares on the security and the terms and conditions mentioned in the agreement.

I would, therefore, reverse the decision of the Master unless, as contended by the liquidator of the Atlas Co., the Elgin Co. are not entitled to prove by reason of the invalidity of the debenture as an obligation binding on the Atlas Co., . . . the ground being that the issue of the debenture was *ultra vires* the Atlas Co. because when issued their statutory power to borrow on debentures was exhausted, and because, if it was not exhausted, debentures had already been issued to the full amount authorized by the only by-law for the issue of debentures which had been passed by the directors.

It is unnecessary, I think, to consider these objections, for, assuming them to be well taken and the debenture void, the Elgin Co. would nevertheless, in my opinion, be entitled to prove for the amount of the loan and the interest upon it.