

By that judgment it had been ordered that Hooey should deliver up 5,000 shares of stock which had been assigned to him by Thorpe, McPhail 5,000 shares, and Reese 14,500 shares, similarly assigned. Reese appealed, but this condition was acceded to by 2 of these 3 defendants, Hooey and McPhail, so that the substance of the transaction was that these two were receiving shares in consideration of their past services and the abandonment by them of a right to appeal. It is clear that the abandonment of an action brought to enforce a doubtful right or claim is a sufficient consideration for a promise, and so is the abandonment of a disputed claim, even though it ultimately turns out that the claim was wholly unfounded: *Callister v. Bischoffstein*, L. R. 5 Q. B. 449; *Miles v. New Zealand Co.*, 32 Ch. D. 266.

I have no grounds for believing that the claim by these two to the shares of which they were deprived by the judgment already referred to was not made bona fide, or that they knew that there was no reasonable ground of appeal. I think they were giving up something, and that this was a sufficient consideration for the stock they received. It is impossible to say what part of the stock received should be allotted to the abandonment of the right to appeal, and what part to the services, but I think that the arrangement made at the general meeting, with these 3 defendants, is binding.

I am asked also to make a declaration that it is illegal for the defendants who are directors of the company to borrow money from themselves; and also to declare that they must not use the money of the company to repay themselves. It appears that when the company was in dire straits, the directors put their hands in their own pockets and advanced money to keep it afloat. I shall not declare that that was wrong—if it was illegal, no good will be done by my saying so. And I shall not, in advance, prevent the directors repaying themselves as they are able out of the funds of the company. If they do so, and it is illegal for them so to do, an action may then be brought.

As against defendants Hooey and McPhail the action should be dismissed with costs; so far as the claim for a declaration as to the powers of directors to borrow, etc., the action will be dismissed with costs as against all the defendants; as regards the other claims there will be no costs, as there has been part success on both sides.