

ANGLIN, J.:—The plaintiff sues to recover the sum of \$2,842 and interest thereon, alleged to be due him under an agreement made by the defendants on 21st April, 1902, whereby they promised to pay to him the sum of \$3,000, balance of the purchase money of the assets and goodwill of the Clark Dental Manufacturing Company, in stated instalments, with interest on deferred payments. The trial Judge . . . found that, by agreement entered into on 21st April, 1903, and slightly altered and finally settled on 26th October, 1903, the plaintiff, in consideration of certain stipulations in his favour then made by or through Dr. Beattie Nesbitt, agreed to release and did release the defendants, the Hubbard Company, from their obligations to him under the agreement of 21st April, 1902. The evidence as to the character of the negotiations between the plaintiff and Dr. Beattie Nesbitt and as to the purport and intent of the memorandum executed on 21st April, 1903, and confirmed on 26th October, 1903, by the signatures of both the plaintiff and Dr. Beattie Nesbitt, is conflicting. Upon this conflicting evidence the trial Judge has based his finding that the purpose of the parties was to effect a novation agreement releasing the defendants and substituting for them as debtors to the plaintiff the obligors under the new agreement. It is impossible to say that there is not evidence and sufficient evidence to support the finding of the Chief Justice. With that finding it is therefore impossible for us to interfere.

The plaintiff, however, urges that the novation agreement was invalid and ineffectual, because, as to a portion of the consideration which it purported to give to him for the release of the Hubbard Company from liability, it is illegal. The memorandum of this agreement is in the following form:—

\$11.50

30 dy.

300

850 due 27th Sept.

6 per cent.

Clark receives

2,500 pref. stock.

1,250 com. stock.

300 draft accepted by C. D. H. Co., 30 days

850 draft accepted by C. D. H. Co., due 27 Sept.