

At the meeting of directors . . . held on 21st February . . . plaintiff was present, and moved a resolution authorizing the acceptance of Donovan's application for these 30 shares.

Defendant Donovan applied for and obtained certificates for these 30 shares . . . 27 on 5th April and 3 on 3rd May. . . . The note given by defendant Donovan was not given until 25th April. . . . He had from 5th to 25th April a certificate for 27 shares from the company with only \$300 paid upon them. The note for \$2,700, being the balance of the \$3,000, was given payable 6 months after date, and so became due on 28th October, 1905.

On 19th October plaintiff's solicitors wrote to each of the defendants asking that the money be paid or that the stock be cancelled, and also asked the company to call a meeting of the directors to cancel this stock. Plaintiff knew the note had been given, and presumably knew the date of maturity . . . , and could easily have ascertained, if he did not know, that the bank held Donovan's certificate for shares as collateral security for payment of the note.

Defendants' solicitor on 20th October replied to the letters that the president of the company was in the North-West, and would be there for a month. They called attention to the fact that plaintiff himself was the holder of a certificate or certificates for unpaid stock, and they asked for a delay of proceedings until the return of the president, promising an early consideration of all matters in which plaintiff was interested. . . . Plaintiff declined to delay, and the writ in this action was issued on 23rd October. The note given for the balance on these shares was paid on 3rd November, and on that day defendants' solicitors wrote to plaintiff's solicitors notifying them of the payment of the note, and asking for a discontinuance of the action. Defendants did not offer to pay costs. To this letter, so far as appears, plaintiff's solicitors did not reply. They certainly did not offer to discontinue upon payment of costs. The parties preferred to stand on their strict legal rights, and on 6th November the statement of claim was filed. Upon the trial counsel for plaintiff conceded that, these shares having been fully paid by the payment of the note, nothing was then involved in this action but costs.

Was plaintiff in a position to maintain this action? He applied for and obtained certificates for 70 shares on 11th March. . . . He says it was a transaction not with the