

A. C. McMaster, for the liquidator.

H. E. Rose, K.C., for the defendant.

BOYD, C.:—The plaintiff company was (as a witness said) getting into deep water, and a plan was formed to relieve the situation by forming subsidiary companies, who should buy out part of the assets, and so better the condition of the plaintiff company. It was desired to get some members of the old company to enter the several new companies, and, of these members, Irish, the defendant, held \$1,000 of paid-up stock in the plaintiff company, which he was willing to relinquish and acquire the like amount of paid-up stock in one of the new companies. The matter was negotiated by Mr. Chandler, his cousin, and a leading officer, president, and member of the plaintiff corporation. Irish does not know, as he says, how the change was brought about, beyond this, that he handed over his scrip in the plaintiff company to Chandler, and he subscribed for stock in the new company, on the understanding that he was not to pay for it. Nor did he pay for it, though subsequently a fully paid-up certificate for the stock was handed to him.

The payment for the stock was managed in this way. The new company bought assets to a large extent from the old company, and paid for them by cheque and otherwise. One of the cheques passed was for \$3,200 from the new company to the old one (plaintiff), and, as a part of the same transaction, a cheque of like amount and date was passed from the old company (plaintiff) to the new company, which was by that company treated as the means whereby the defendant's stock therein (together with other stock in like case) should be handed over as paid-up stock. The cheque or the money so received and so applied by the new company was undoubtedly the assets of the old company, and was illegally applied in the purchase of stock for Irish in the new company.

I quote some passages from the evidence of Ingram (one of the constituents of both companies) referring to cash item of \$3,000 (31st October): "That was \$3,200 worth of shares that were on what we termed a transfer basis from one company to the other: shareholders in the Chandler-Massey company got shares in our company for that amount. The way it was paid (as by the books) was our giving a cheque and getting a cross-cheque back and giving these people shares in our company instead of the Chandler-Massey."

The defendant was a provisional director of the new company, and, when he was subscribing for the new stock, he was told by Ingram that his \$1,000 would be handled on the stock