

the dividend paid to him upon the assumption that he was the owner. The amount paid him was \$200 only. The defendants contend that this is not the extent of his liability, but that, having brought them the assignment to himself of the stock in question, and requested that he be recorded as owner, he undertook to indemnify them with respect to the act which he requested to be done. This is denied by Counsell, and it is contended by him that the most that can be said is that the injury to the defendants is the result of the negligence of both the defendants and Counsell in not ascertaining Stuart's lack of title, and in assuming that he had the right to deal with his son's stock, and that this common negligence leaves the parties without any remedy against each other.

The situation is admitted to be different from that found in any case cited, and calls for a very close scrutiny of the authorities.

The \$400 bonus paid to Counsell's transferee (that is, the bonus of \$200 each on the two shares transferred by Counsell) is the matter now to be dealt with. This is a debt due by the defendants to the plaintiff as the dividend or bonus declared upon her stock.

The indemnity or "right over" sought to be enforced in this action is based upon the theory that this dividend has been paid to Counsell's nominees as the result of his having propounded for registration the assignment in question as a valid and operative document, when in truth it was of no effect whatever. As to this there was no tort on the part of either the defendants or Counsell. . . . The real question is, can the defendants recover against Counsell the dividend which they have paid to his transferee? I think they can, and that Counsell, having transferred stock to which he had no title, really requested the company to pay the dividend to his transferee, and that he stands in no better position than if the dividends had been paid to him. The cases cited deal with the situation arising when the company have made a settlement with the original owner by paying the value of the stock; and it seems to me that different considerations then arise from those involved where, as here, the demand is purely with regard to the dividends paid.

The entry of the transferee under an invalid instrument as owner of the stock, no doubt, is a tort, and damages might be recovered for it; but no such damages are here sought, and I am not called upon to discuss the question of indemnity with respect to an act which is tortious.