

mode in which the appellant should be charged on his shares, and in respect of a payment of \$300 authorized to be made to the appellant for his services to the company under a resolution of the shareholders, which sum was placed to the appellant's credit on his debt for unpaid stock. The liquidator objected to this payment on the ground that no services had in fact been performed, but the Judge below held in favour of the appellant.

E. B. Ryckman and A. T. Kirkpatrick, for Paton.
C. D. Scott, for the liquidator.

The judgment of the Court (MOSS, C.J.O., MACLENNAN, GARROW, MACLAREN, J.J.A.) was delivered by

GARROW, J.A.— . . . In my opinion, the evidence shews clearly that the real transaction between the company on the one hand and Moorehouse and Brodie on the other, were that the latter should become shareholders in the company and that the powers of attorney given by them were taken instead of ordinary applications for stock, at the instance of the company, under the mistaken belief that there was at that time no treasury stock to meet such applications, and that it would be necessary to receive transfers of shares which had been allotted to prior applicants who were unable to pay for them. Moorehouse and Brodie having paid the company for the five shares in question, and having received their stock certificates for them some time previous to the transfers from Paton, the latter could not relieve himself from liability by attempting to transfer his unpaid shares to these parties, when he did not and could not make them liable to the company for their payment. It may be noted that the motion for the allotment of the three company shares to Dr. Moorehouse was made at the meeting of the board by Paton himself.

It was strongly argued before us on behalf of Patton that he could transfer his unpaid shares, even although his object might be to escape liability, and that we should accept as conclusive the entries in the books. I do not consider the authorities cited to us on this point to be applicable to the present case. It was known to the company and to Paton that these applicants did not apply for or desire more shares than mentioned in the powers of attorney. After they had paid the company for and accepted certificates of paid-up shares in fulfilment of their contracts, Paton could not effectually transfer to them his unpaid shares without their knowledge or consent, and I do not think that the old powers of attorney could properly be used to accept transfers of these shares under the circumstances. In my opinion the judg-