

ler, to issue and sell some \$40,000 worth of stock for the company; that he had engaged one Farrow to sell the stock as his sub-agent; that, without any authority from, or communication with the directors, Farrow had made an agreement with plaintiff for the sale to him of the stock in question, taking in payment his promissory note payable to defendants for the whole purchase price, and agreeing on behalf of defendants for renewals of such note if plaintiff should require them. . . . Miller, upon being notified of this arrangement, immediately issued a certificate to plaintiff for the number of shares he had agreed to take as paid-up stock, took his receipt for such certificate, entered plaintiff as a shareholder in the company's stock ledger, and placed the note in question under discount with a bank, its proceeds being put to the credit of defendants. Nothing further occurred until the note matured. In response to demands made by the bank for payment, plaintiff did not dispute his liability, and he now says that the only reason he has not paid, and objects to pay, is that he has not received the money which he had expected from his brother. Indeed when seen by Farrow, after the note had been charged up by the bank against defendants' account, he promised Farrow, whose statement I accept, to come in next day and pay defendants \$100 on account.

It is now urged, though no such plea appears on the record, that there was no allotment of stock to plaintiff; that he never became a shareholder; and that the consideration for his note therefore failed. Assuming that plaintiff should be allowed by amendment to seek delivery up and cancellation of his note upon this ground, I am of opinion that it cannot prevail.

While the resolution of the board of directors authorizing Miller to sell stock may have been entirely ineffective as a delegation to him of their discretion, as to the persons to whom and the terms upon which shares should be allotted, and while the handing over of the stock certificate and the taking of plaintiff's note might not have been binding on them, had they promptly repudiated the transaction, defendants in this case have seen fit to confirm what their agent, Miller, did. They accepted and discounted plaintiff's note; they allowed him to hold a shareholder's certificate; they entered him upon their stock book as a shareholder; they even pressed their claim against him upon the note be-