

to put the parties in the same position as they occupied before the agreement of 21st April, 1903, was entered into.

Whatever might have been his rights had the plaintiff promptly repudiated the novation arrangement, it is entirely too late now, because of any part failure of consideration under that agreement, to open up the entire transaction and to restore him in regard to the defendant company to the same position which he held before releasing them.

Moreover, it is asserted by counsel for the defendants that the stock for which the plaintiff stipulated in the arrangement of April, 1903, has been allotted to him by the Dominion Chair Company, now the Clark Manufacturing Company, and that the certificates for such stock can be had by him at any time he chooses to seek them. If this stock is not paid up stock, as the plaintiff alleges, and if he is unable to obtain paid up stock because of the inability of either the defendant company or the Clark Manufacturing Company to give him such stock, it may be that the plaintiff will have a cause of action for damages, if not against one or other of these companies, against Dr. Beattie Nesbitt, either because he personally undertook by the agreement of April, 1903, that the plaintiff would receive such stock, or because he entered into this agreement, on behalf of either the defendant company or the Dominion Chair Company, upon an implied representation that he had authority to bind and did bind either one of these companies to give the plaintiff the stock in question. Upon this aspect of the case it is unnecessary to express any opinion.

The plaintiff's appeal, in my opinion, fails because he has for 3 years and upwards acted upon the agreement of April, 1903, has permitted the Dominion Chair Company to act upon the same agreement, has himself received very considerable benefits under the agreement, and has, during the same period, withheld all claim against the defendant company. The appeal should be dismissed. But, inasmuch as the laxity and disregard of formality by the defendants or their agent, Dr. Nesbitt, afforded plausible grounds for the attitude of the appellant, we think he should not be required to pay the costs of the appeal.