

whether he continued president of the company or not, and that, to secure the payment thereof, the defendant would procure shares in the stock of the purchasing company and hold the same as trustee for the plaintiff; and that the defendant did subsequently procure for the plaintiff 112 shares of fully paid common and 50 shares of fully paid preferred stock in the Dominion Glass Company. The defendant pleaded that the refusal of the plaintiff to pay the defendant's bill of \$25 for alleged services in procuring security, which the defendant had undertaken as part of the bargain to obtain, amounted to a repudiation by the plaintiff of the security thus obtained, and warranted the defendant in subsequently handing over the stock to W. A. Gordon, the manager of the company, who had made a previous bargain with the plaintiff to pay him \$2,000 a year. That plea was altogether untenable—the defendant himself did not act upon that view of the matter. After the plaintiff had refused to pay the \$25, the defendant took the stock from Gordon, and it must be assumed that the taking of it was pursuant to the contract between the plaintiff and defendant. The defendant held it for years for the like purpose. Notwithstanding that he was a trustee for the plaintiff of the stock, he, in breach of the trust, delivered it to Gordon without notice to the defendant or authority from him. There should be judgment for the plaintiff, declaring that the defendant became the trustee of the stock for the plaintiff to secure the payment to the plaintiff of the annuity of \$2,000 a year for his life; directing that the defendant as trustee account to the plaintiff for the stock; that, as he had parted with the stock, he should be allowed 30 days to replace it; that, in default of his so doing, a reference be directed to the Master at Chatham to ascertain the value of the shares on the 23rd July, 1917, when they were delivered by the defendant to Gordon, unless the parties could otherwise agree upon the value; for recovery by the plaintiff against the defendant of the amount so found or agreed upon; and for the appointment by the Master of a new trustee to receive the shares or the amount found as their value, upon the terms of the agreement signed by Gordon, dated the 31st May, 1913, and the letter of the defendant to the plaintiff of the 2nd June, 1913. The plaintiff should also have judgment for his costs of the action, including the costs of the order for his examination *de bene esse* and of that examination and of the reference. O. L. Lewis, K.C., for the plaintiff. J. M. Pike, K.C., for the defendant.