

HIGH COURT DIVISION.

CLUTE, J.

MARCH 12TH, 1917.

ABBOTT v. ST. CATHARINES SILK CO.

Company—Agreement between Promoters—Goods Supplied to be Paid for in Shares of Company's Stock—Recognition by Company—Representations—Issue of Shares—Claim against Company for Price of Goods—Assignment of Chose in Action—Conveyancing and Law of Property Act, R.S.O. 1914 ch. 109, sec. 49—Assignment Subject to Equities.

Action by the trustee in bankruptcy of an incorporated company, the Kromer & Griffin Silk Company, of New York State, to recover from the defendant company the amount of a money demand for merchandise alleged to have been purchased from Kromer & Griffin, a mercantile firm, who had assigned their claim to the New York company on the 8th June, 1915, and also a sum claimed by that company for merchandise supplied by it to the defendant company. The price of the whole was \$19,994.12, and a balance of \$9,272.35 was alleged to be due.

The action was tried without a jury at St. Catharines.
 W. M. German, K.C., for the plaintiff.
 J. R. Ferguson, for the defendant company.

CLUTE, J., in a written judgment, set out the facts in detail. He said that the defence was that the amount in question did not represent an indebtedness of the defendant company, but was in fact part of its capital, paid for by fully paid-up shares of the capital stock, under an agreement made, before the defendant company's incorporation, between Kromer & Griffin and the other promoters and incorporators of the defendant company, and carried out by the defendant company pursuant to that agreement.

The learned Judge said that, in the view he took of the case, there having been a preliminary agreement by which the New York company was to put in machinery and material, to be paid for in stock, and representations having been made to the bank upon the faith of which the defendant company received large advances, that company was bound, if it could, to make these representations true. The machinery and advances of the New York company were represented as capital to the extent of over