

uncontradicted testimony. The extrinsic evidence is not within the mischief of the general rule as tending to vary the written contract. The use of the word "commission" in the letter of 30th March, 1901, shews that the transaction is not an ordinary subscription for shares, and the real transaction could be explained by parol evidence. See per Lord Davey in *Bank of New Zealand v. Simpson*, [1900] A. C. at p. 188. The case is not one of the illegal issue below par of shares in the capital stock of a company, as in *North-West Electric Co. v. Walsh*, 29 S. C. R. 33, but it is an agreement to place shares, which is not equivalent to "take shares:." *Re Monarch Ins. Co., Gorrieson's Case*, L. R. 8 Ch. 507. The payment by a limited company of a reasonable amount to brokers by way of commission or brokerage for placing shares is not an act *ultra vires* of the company: *Metropolitan Coal Commissioners Assn. v. Scrimgeour*, [1895] 2 Q. B. 604. What is a reasonable amount depends on the circumstances, and the amount stipulated for here was, the president of the company swears, not unreasonable. This appeal is dismissed with costs.

In Nott's case and Coulter's case, the findings of the referee are in entire accordance with the evidence. Section 25 of the English Companies Act, 1867, made especial provision for the filing of a contract respecting payment of shares in anything but cash, and the English Companies Act, 1900, sec. 331, while repealing sec. 25, makes provision for filing certain returns as to allotments of shares issued for a consideration other than cash. But there seems to be no corresponding section in the Ontario Companies Act. The transaction which the liquidator seeks to impeach was one connected, complete, and integral transaction before the incorporation of the company. There was bona fide consideration for having the shares paid up, and the question of value is not capable of being raised here. And there is no doubt about the identity of the smaller number of shares as being part of the greater. One or more of these elements will be found sufficient to distinguish the present case from cases like *Dent's Case*, L. R. 8 Ch. 768; *Fothergill's Case*, *ib.* 270; *Migotti's Case*, L. R. 4 Eq. 238. Nott's and Coulter's contracts were fully performed by the transfer of assets. The transactions seem to be perfectly straight. Possible creditors cannot be prejudiced, and it would be an extreme hardship if these persons should now be held liable as contributors. Appeals dismissed with costs.