

company transferred this business, with all its assets and goodwill, to the Dominion Chair Company, in consideration of the receipt from that company of a large block of its shares to be allotted to the vendor company as paid up stock. This stock appears to have been issued or allotted in the name of Dr. Beattie Nesbitt as trustee for the C. H. Hubbard Company Limited. Out of the stock so allotted, the plaintiff was to receive the shares stipulated for in the agreement of 21st April, 1903. The plaintiff's contention is that it was ultra vires of the Hubbard Company to acquire this stock, and that, if it is their stock which he is to receive, that company could not, either directly or through Dr. Beattie Nesbitt, validly contract to give it to him, and could not make title to it. If, on the other hand, the agreement is to be regarded as an agreement by the Dominion Chair Company through Dr. Beattie Nesbitt to allot and issue this stock to the plaintiff, he contends that the latter company could not properly issue it to him as paid up stock, and that under his agreement it is only paid up stock that he can be asked to take.

That the arrangements between the plaintiff and the two companies in question, effected through Dr. Nesbitt, are most informal, and possibly such as the plaintiff could not have enforced the performance of, may be admitted. There appears to have been on all sides an utter disregard of the usual formalities accompanying transactions of this character, and Dr. Nesbitt seems to have acted as if he were in very fact and deed both the Hubbard Company and the Dominion Chair Company.

But the plaintiff under the agreement which he now impugns has received payment of the two drafts—one for \$300 and the other for \$850; he has also received salary for upwards of 3 years from the Dominion Chair Company, amounting to something over \$4,000. From the time of the making of this agreement until the summer of the year 1906 he appears to have made no claim upon the defendants. He does not in his present action make any offer to repay the moneys which he has received, and, inasmuch as he has given 3 years' service to the Dominion Chair Company, and cannot return the salary received without leaving himself unpaid for these services, it is practically an impossibility