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SEPTEMBER 21ST, 1906.

DIVISIONAL COURT.

O'SULLIVAN v. DONOVAN.

Company—Shares—Issue of Certificate—Payment by Promissory Note—Estoppel—Action to Cancel Shares—Status of Shareholder as Plaintiff—Right of Action—Payment of Promissory Note Pendente Lite—End of Cause of Action—Costs—Summary Application.

Appeal by plaintiff from judgment of BRITTON, J. (7 O. W. R. 78), dismissing action by a shareholder in the Pure Colour Company Limited (one of the defendants), brought to have it declared that 30 shares of the stock of the company for which a certificate (as fully paid up shares) was issued to defendant Donovan, were not in fact fully paid up, and for the delivery up and cancellation of the shares and certificate, and for indemnity by defendant Donovan to defendants the Pure Colour Co. against liability as the indorser of a promissory note given by Donovan for the price of the shares, which note had been discounted and was held by a bank at the time of the commencement of the action.

BRITTON, J., held that plaintiff had no status to maintain the action.

A. O'Heir, Hamilton, for plaintiff, contended that the transaction was illegal and ultra vires, as it amounted to a purchase of the stock by the company.

H. H. Bicknell, Hamilton, for defendants, contra.