

G. H. Kilmer, K.C., for the liquidator.
W. S. McBrayne, for R. W. Thomas.

MIDDLETON, J.:—Those in charge of this company seem to have formed the erroneous impression that they could issue stock at less than par; and some time before the 1st March, 1911, Mr. Thomas signed two applications for stock. By the first he subscribed for 125 shares of the par value of \$100, and agreed to pay for the same \$10,000 on or about the 1st March, 1911. This stock he intended to carry in his name. At the same time he subscribed for 40 other shares, for which he agreed to pay \$3,200 on or about the 1st March; these shares to be made out in the name of F. R. Daniels. There does not appear to have been any stock allotted or any notice of allotment. The affairs of the company appear to have been conducted in the laxest manner possible; and, so far as the records and evidence shew, there was no corporate action whatever with respect to these subscriptions.

Early in March, Thomas paid to the company \$10,000 in cash, and received from the company stock certificates in the name of Daniels for 40 fully paid-up shares, and in his own name certificates for 85 fully paid-up shares, which together would represent the stock he would be entitled to receive, including the bonus stock.

On the 30th March, he gave his note to the company for \$3,200. This note was not at that time treated as a payment of the balance remaining upon his subscription, but was treated as an accommodation to the company. The note matured on the 3rd July, was paid, and was then treated as being a payment of the balance due for stock. By this time some question had been raised as to the legality of the issue of this bonus stock, and Thomas had taken the position that he would not receive the bonus stock; and he requested a certificate to be made out to him, not for the 40 shares that he would be entitled to receive upon the bonus basis, but for 7 shares only, which, with the 125 already issued, would be paid for in full by the \$13,200 that he had paid to the company.

On the 3rd August, a resolution was passed, reciting that, whereas applications for stock had been taken upon the understanding that a portion of the shares to be issued should be given as a bonus, and certificates had been issued for this bonus stock, and whereas the directors and shareholders had been advised that this issue of bonus stock was illegal, and it had been mutually agreed to cancel the applications and recall any certificates, by which it was resolved that all applications for stock,