

he was entitled, forthwith after the incorporation of the company mentioned in the agreement, on payment by him into the treasury of the company, to have allotted to him common stock of the company to the amount of \$1,500, and as the expenditure on the buildings increased and reached \$100,000, he would have been entitled to receive stock to the par value of \$5,500, on payment of ten per cent into the treasury.

As the additional remuneration plaintiff was to receive was in the stock of the company, unless and until he tendered the ten per cent. (\$150) on the par value of the stock, he was not entitled to have it allotted to him. Had he tendered the \$150, and the company refused to allot it, he could have sued for specific performance or have recovered damages for non-delivery. If he had paid the \$150 and the stock had been issued to him, it might not for some years be worth even the \$150. He could not claim specific performance from defendant of the agreement to allot the stock, or sue him for breach of the contract to deliver the stock, as the contract is with the trustees until the incorporation, when it is with the company. On the present motion the claim of plaintiff must alone be looked at. Plaintiff sets out an agreement between himself and the trustees of the company about to be incorporated, whose service he entered as superintendent, and who agreed to pay him a weekly wage for his services, and, as an additional remuneration, to allot to him certain stock. That constitutes no reasonable cause of action against defendant, with whom he could not pretend to have any contract after the agreement was executed. The action is unsustainable. Order made setting aside statement of claim and vacating registration of lien, with costs. See *Kellaway v. Bury*, 8 Times L. R. 433; *Willis v. Earl Beauchamp*, 59 L. T. N. S.; *Solomons v. Knight*, 8 Times L. R. 472; *Hubbuck v. Wilkinson*, [1898] 1 Q. B. 86.

MACMAHON, J.

JULY 4TH, 1903.

WEEKLY COURT.

REX v. DUNGEY.

*Justice of the Peace—Quashing Conviction—Costs.*

Motion by defendant to quash conviction with costs against convicting magistrates. A Divisional Court (2 O. L. R. 223) allowed an appeal from an order of Robertson, J., refusing a certiorari. The prosecutor and magistrate assented to the