

I think the bank has not power to transfer these shares or enforce payment for them against an unwilling purchaser. The bank has no legal title to the shares, and can confer none; so that in the hands of any one having knowledge or notice of the facts or of the violation of the statute, the notes cannot be enforced by action.

This legal result of the facts indicates the practical impossibility of the bank undertaking to indemnify the defendants in regard to their having become holders of the stock. The expenditure of the bank's money was a misfeasance in the first place, and any indemnification would be an agreement further to misuse the shareholders' money.

Upon the evidence it appears that fifteen of the notes sued on required to be indorsed to the plaintiff after the 18th January, 1908, before he would acquire title thereto or become a holder in due course. . . . My conclusion is as to these fifteen notes that he had sufficient notice of the situation as between the directors and the bank as to this stock being purchased with the bank's moneys and as to the way in which the notes sued on were given.

As to these fifteen notes, the actions fail and should be dismissed; but no costs are given where the defence is illegality.

Bicknell, K.C., and MacKelcan, for plaintiff. W. Nesbitt, K.C., Arnoldi, K.C., H. S. Osler, K.C., and J. Wood, for defendants. Hellmuth, K.C., Anglin, K.C., and Boland, for bank.

Middleton, J.]

RE SOLICITOR.

[May 27.

*Solicitor—Retention of client's money—Delivery of bill of costs
—Disobedience—Retainer—Settlement—Preparation of bill
—Attachment.*

Motion by client to attach a solicitor for disobedience to a order requiring him to deliver a bill, which order had not been moved against nor complied with. It appeared that on October 2, 1908, the solicitor received for the client as a result of the settlement of the suit \$2,600, and paid her \$625, retaining the balance presumably as costs of the litigation, but no bill had ever been delivered.

MIDDLETON, J., after referring to the facts and deciding some question in relation thereto said that the promise to pay a retainer is void: *Re Solicitor*, 14 O.L.R. 464. A retainer is a gift by the client to the solicitor, and, like all gifts, must be a voluntary act. With reference to the settlement suggested by the