

Harris
vs.
Stevens.

ings against the trustees of debtors. 5 *N. H. R.* 193, *The N. H. I. F. Company vs. Platt*. But whether they could be so considered was a question which he was not bound to decide at his peril. And we are of opinion that he had a right to retain the notes until that question was settled by the proper tribunal, or an indemnity tendered to him to save him harmless from the trustee process. It was so held in the case just cited from 5 *N. H. R.* 193.

We are, therefore, of opinion that there must be

Judgment for the defendant.

HARRIS vs. STEVENS.

S, on the 6th March, made a written proposal to H, to convey to the latter all his right and title in certain shares in a turnpike, at \$5 per share, provided H gave security for the price by the 24th March. After this, S received a dividend upon the shares, and H not being apprized that the dividend had been received, on the 18th March gave security for the price, and took a conveyance of all the interest S then had in the shares. It was held, that the dividend received by S belonged to H, and might be recovered in an action for money had and received.

THIS was an action for \$300, money had and received by the defendant for the use of the plaintiff.

The cause was tried upon the general issue at April term, 1835, and a verdict taken for the plaintiff, subject to the opinion of the court upon the following case.

On the 6th March, 1834, the defendant, being the owner of certain shares in the Croydon Turnpike Corporation, made and delivered to the plaintiff a written memorandum, as follows :

“ *March 6, 1834.* It is hereby understood between me and J. Harris, of Plainfield, that if the said Harris shall by

'the 24th of March instant give me good security and interest for my property in the Croydon Turnpike road, at the rate of \$5 per share, which will be between ninety and a hundred shares, then I quitclaim all my right and title to him.

Harris
vs.
Stevens.

J. STEVENS."

On the same day the annual meeting of the said corporation was holden, and it was voted by the corporation "that the director shall make a dividend of all money arising from toll, after deducting the necessary expenses and costs of repairs, among the proprietors in proportion to their respective shares, and shall also give orders on the treasurer for the payment of the same whenever he may think it expedient; and shall also make assessment on all shares, when the interest of the corporation in his opinion shall require it." At the same time the defendant was elected sole director for the year.

After delivering to the plaintiff the memorandum above mentioned, and after the adjournment of the said meeting of the corporation, there being certain monies in the treasury, the defendant directed the treasurer to pay out a dividend of \$2 on each share, and received of the treasurer that sum on each of the shares he then held.

On the 18th March, 1834, the plaintiff, not knowing that the defendant had received the said dividend upon the shares, gave security for the price of the shares at the rate of \$5 for each share; and the defendant at the same time by deed conveyed all his right, title and interest in the shares to the plaintiff.

This action was brought to recover of the defendant the amount of the dividend received by him upon the shares as above stated.

Handerson and Wilson, for the defendant, contended that the memorandum made on the 6th March by the defendant was a mere proposal and no evidence of a contract. *Harris* was not bound to take the shares, and of course *Stevens* was

Harris
vs.
Stevens.

not bound to convey them,—there being no consideration to sustain an agreement to convey. No binding contract was made until the 18th March, and the contract then made has been fully performed on the part of the defendant.

Hubbard & Gilchrist, for the plaintiff, insisted that although the memorandum might not have shown a binding contract on the 6th March, but a mere proposal, yet when the plaintiff on the 18th March accepted the proposal, and gave security for the price of the shares, he was entitled to have all the interest which the defendant had in the shares on the 6th March, when the proposal was made.

RICHARDSON, C. J., delivered the opinion of the court.

We are of opinion that the plaintiff is entitled to retain the verdict.

Shares in corporations are not strictly speaking chattels, but are rather in the nature of choses in action. They may, however, be the subject of a contract to sell. *Angel & Ames on Corporations*, 316; 2 *Bingham*, 393; 2 *Pickering*, 243; 9 *ditto*, 202; 6 *ditto*, 324; 8 *ditto*, 90; 17 *Mass. R.* 240; 10 *ditto*, 476; 9 *Vezey*, 174; 3 *Binney*, 394.

It is unnecessary to consider, whether any binding contract was made on the 6th March. For, if the memorandum amounts to nothing more than a mere proposal, still it was without question a proposal to convey to the plaintiff all the interest the defendant had in the shares when the proposal was made. And when the plaintiff on the 18th March accepted the proposal, and gave security for the price, according to the offer, he was by the terms of the bargain entitled to all the interest in the shares which the defendant had when the offer was first made: and the dividend which the defendant received after that offer must in equity and good conscience be considered as the money of the plaintiff.

Judgment on the verdict.