

Appeal by the plaintiff from the judgment of SUTHERLAND, J., dismissing the action and allowing the defendants' counterclaim. The action was brought for a declaration that the plaintiff was the beneficial owner of 25 shares of the capital stock of the defendant company, under an agreement between him and the company dated the 6th October, 1904. On the 21st February, 1910, the plaintiff was discharged from the service of the defendant company, and at that time 25 shares were standing in the name of the defendant Moodie as trustee for the plaintiff. The counterclaim was for rectification of the agreement.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

J. Bicknell, K.C., and G. S. Kerr, K.C., for the plaintiff.

G. T. Blackstock, K.C., and W. A. Logie, for the defendants.

MACLAREN, J.A.:—The plaintiff was for about seven years the manager of the company defendant, and about a year after entering the company's service they made an agreement under seal whereby the company, "as an inducement to and reward for faithful and loyal service in the future as in the past," transferred 50 shares of their paid-up stock to their president in trust, the dividends to be paid to the plaintiff, and 5 of the 50 shares to be transferred to him at the close of each year. The plaintiff was not to have the right to dispose of the stock, but, in the event of his death or ceasing to be in the service of the company, the company were to have the right to nominate a purchaser to acquire the stock at par.

The plaintiff bases his claim entirely upon the written agreement, and says that he is entitled to the 5 shares at the end of each year, whether he be then in the employ of the company or not. The company say that, under a proper construction of the writing, he is entitled only while he is in the employment of the company, but, if the writing does not clearly express this, they ask that it be reformed so as to conform to what was the real agreement and intention of the parties.

As pointed out by the authorities, if such a reformation is asked for, the party seeking relief undertakes a task of great difficulty, since the Court must be clearly convinced by the most satisfactory evidence, first, that the mistake complained of really exists, and next, that it is such a mistake as ought to be corrected. If there is no documentary evidence to support the claim for reformation, and the party seeking it relies wholly