

March, 1911, to the plaintiff, requiring him to pay \$50,000 and interest thereon at 6 per cent. per annum from the 1st May, 1909, to the date of payment, and offering to transfer to the plaintiff, upon such payment, 1,000 shares of the capital stock of the defendant company; and on the 5th April, 1911, a similar notice was issued.

There was some contention between the parties as to whether these notices were properly served on the plaintiff within the time required by the agreement. With this aspect of the case I shall not deal at present; but, even if the notices were duly served, I am of opinion that the sale, for other reasons, cannot be upheld.

The only method of realising on the shares on default in payment, was that given by the power of sale in the agreement.

Advertisements for tenders for the sale of the first 500 shares (that is, the shares which had been purchased by the defendant Grice) were inserted in the *Toronto Globe* on the 15th, 22nd and 29th July, 1911, and in the *London Globe* on the 1st, 8th, and 15th August, 1911; and advertisements for tenders for the sale of the other 500 shares were inserted in the *Toronto Globe* on the 21st and 28th July and the 4th August, 1911, and in the *London Globe* on the 1st, 8th, and 15th August, 1911.

On the 27th October, 1911, the defendant Naylor made an offer of \$100 for the purchase of the second block of 500 shares, namely, the shares held by Grice as security, and his offer was accepted, and the defendant company were called upon to have the transfer to the purchaser entered in their books, but were restrained by injunction from doing so.

I find that the power of sale was not properly exercised. The power required the advertisements for tenders to be inserted "three times with an interval of a week between each time." While this language shews want of care in its preparation, there cannot be any doubt that it means that there was to be an interval of a week between the date of one insertion and the date of the insertion next succeeding it. Inserting the advertisements on the 21st and 28th July and 4th August, and on the 1st, 8th, and 15th August, was not a compliance with the provisions of the agreement, inasmuch as an interval of a week did not elapse between the date of one insertion and the date of the insertion next succeeding it. . . .

[Reference to *Regina v. Justices of Shropshire* (1838), 8 A. & E. 173; *In re Railway Sleepers Supply Co.* (1885), 29 Ch. D. 204; *Chambers v. Smith* (1843), 12 M. & W. 2; *Young v. Higgon* (1840), 6 M. & W. 49.]