

such allegations are in said declaration made, or any thing set forth to shew that the Plaintiff was or is so held to said Vendees or transferees, or hath suffered and sustained any damage, legally, recoverable from Defendants.

5th. Because from the allegations of the Plaintiff's declaration the Plaintiff seeks to impose liability on Defendants grounded on an alleged interest in the shares in his declaration referred to not as absolute proprietor thereof or as an actual share-holder in Defendants' Company, but on the contrary arising from the peculiar nature of the understanding and alleged debts and transfer as collateral security for said debt, and on alleged demands by said transferees, whereas no such qualified and possible interest in any surplus from the proceeds of said shares can impose such liability on the Defendants or vest on the said Plaintiff as possessing such interest any right in law to the said sums of money claimed in this action, and because the said Plaintiff by his declaration seeks to recover the money demanded on the ground of such partial interest in the said shares or the proceeds thereof and by reason of the peculiar contracts aforesaid to which Defendants could not and are not alleged to have been parties.

6th. Because from the Plaintiff's Declaration, it appears that the alleged transfer of said shares were made to the transferees and the present action brought by the Plaintiff founded upon and with reference to contracts and with understandings peculiar to the relation of alleged debtors and creditors and to discretionary power in said transferees as to the form and mode of realizing said shares or even of holding them indefinitely and with power to the Plaintiff on payment of his debts to resume said Stock and that the said transfers originated in and were carried out in consequence of undertakings between the said parties that such transfers should be so made, and the said Plaintiff seeks to render the Defendants so liable as proprietor of the shares and as if the refusal to transfer had been made on his demand as such proprietor and also as if he, the said Plaintiff were liable over or had actually paid the damages which as such vendor or transferor he might have been liable to the transferees or vendees from not vesting the said shares fully and absolutely in said vendees or transferees by a registration in their name in the Defendants' Books as the owners of said shares.

7th. Because the Plaintiff hath not in and by his said Declaration set forth any loss or damage which he the said Plaintiff can legally claim or which he can recover from the Defendants by reason of the alleged refusals to transfer the shares in Plaintiff's Declaration referred to the transferees in said Declaration named and hath not alleged any loss or damage legally suffered by Plaintiff from or by reason of or directly and proximately arising out of any default or neglect of the Defendants in respect of or towards said Plaintiff.

(Signed,) CARTIER & BERTHELOT,
Defendants' Attorneys.

Montreal, 10th June, 1858.

And for *Défense en Droit*, or special demurrer to all that part of the Plaintiff's Declaration which relates to the City and District Saving's Bank therein named, to wit: to that portion thereof written on the third and fourth pages of said declaration and which is in the words following, to wit:—

"That on the twenty fifth day of November, eighteen hundred and fifty three, the said Plaintiff being indebted to 'The City and District Saving's Bank of Montreal,' in the sum of four thousand seven hundred and forty pounds, nine shillings and eight pence Currency, for money by the said Bank loaned to him the said Plaintiff and having engaged to transfer to the said Bank two hundred and ten of the said two hundred and sixty-eight shares as collateral security for the due payment of such indebtedness and in order that the said Bank might realize the amount so due to them by the said Plaintiff out of the sale of the said two hundred and ten shares, he the said Plaintiff did in due form of Law, by an instrument in writing executed in duplicate on the said twenty fifth day of November, eighteen hundred and fifty three, transfer and sell to the said Bank the aforesaid two hundred and ten shares in the Capital Stock of the said Company Defendants; the whole on the understanding that the surplus of the proceeds of the sale of the said two hundred and ten shares after deduction of the Plaintiff's said debt, should be paid by them to the said Plaintiff.

"That thereupon the said Bank duly demanded of the said Company Defendants, to transfer the said two hundred and ten shares of Stock on the Books of the said Company Defendants to the said Bank, and then and there also presented to the said Company Defendants, the said transfer and offered to surrender the same on the due execution of such transfer aforesaid on the Books of the said Company, but the said Company Defendants wholly neglected and refused to execute such transfer on the Books of the said Company. Whereupon afterwards, to wit: On the ninth day of December eighteen hundred and fifty three, (the said Bank having in the mean time made similar verbal applications on several occasions, but without effect), through the ministry of J. J. Gibb and his Colleague, Notaries Public, the said Bank did formally reiterate their said demand to have the said two hundred and ten shares transferred as aforesaid on the Books of the said Company Defendants, and did also then and there re-exhibit and re-offer to surrender the said transfer as aforesaid, but the said Company Defendants, still persisted in refusing to transfer the said two hundred and ten shares on the Books of the said Company and thereupon the said Bank duly protested against the said Company for all costs, losses, damages, injuries and hurts, had suffered and sustained or which might thereafter be had suffered and sustained in consequences of the premises, as the whole will more fully appear by reference to an authentic copy of