

KELLY, J.:—By an agreement made between the plaintiff and defendant Grice, on the 23rd February, 1910, the plaintiff agreed to transfer to Grice 500 shares of the capital stock of that company as security in respect of another 500 shares which had been purchased and paid for by the defendant Grice. The agreement also provided that the plaintiff should transfer to the defendant Grice a further 100 shares of such capital stock, which Grice was to be entitled to hold for himself absolutely, subject to certain rights of the plaintiff in respect thereto. There is a further provision that, in the event of Grice not having before the 1st April, 1911, received in dividends upon the 500 shares so purchased by him \$50,000, he was to be entitled up to, but not after, the 15th April, 1911, to call upon the plaintiff to pay him \$50,000 and interest at 6 per cent. from the 1st May, 1909, till the time that such sum should be paid to him, less any dividends received by him prior to such repayment; and on payment of such sums the plaintiff was to have the right to call on the defendant Grice to transfer to him the 500 shares purchased by Grice, the 500 shares transferred to Grice as security, and the other 100 shares above referred to. Further, if the plaintiff failed to pay the sums mentioned within 30 days after being called upon by Grice to do so, Grice was to be entitled to realise on, “first, the 500 shares now held by him in the said company and paid for by him, and secondly, the 50 shares in the company to be transferred by Mr. Bartram to Mr. Grice as security as aforesaid; thirdly, the 100 shares,” etc.

The manner in which the shares were to be disposed of was this: “Mr. Grice shall dispose of the shares as follows, that is to say, he shall call for tenders by advertisement to be inserted three times with an interval of a week between each time in the *Globe*, Toronto, and in some well known London newspaper, and Mr. Grice shall accept the highest tender for cash for the said shares, or shall himself purchase the said shares at the amount of the highest tender, but in no event shall Mr. Bartram be personally liable for the repayment of the \$50,000 purchase-money.”

There was a still further provision that, “in the event of Mr. Grice not calling on Mr. Bartram for repayment of the \$50,000 prior to the 1st April, 1911, and offering to retransfer to Mr. Bartram the full 1,000 shares, then in such event Mr. Grice shall re-transfer to Mr. Bartram the 500 shares held as security, before the 1st May, 1911.”

Grice not having received in dividends the \$50,000 and interest, he, by his solicitors, issued a notice dated the 28th