

fendant against the plaintiff is properly more than his claim against her, his appeal in the first action should be dismissed.

The principal dispute in action No. 2 is whether the original defendant converted to his own use the 63 shares in the capital stock of the McCarthy Company, and whether the defendant wrongfully retains certain paid-up policies of insurance on the life of the plaintiff, amounting to \$5,000.

Certificates representing 63 shares in the capital stock of J. McCarthy & Sons Limited were assigned by the plaintiff to his brother D. J. McCarthy in July, 1895. The shares represented the interest of the plaintiff in the estate of his deceased father, a brewer at Prescott. The plaintiff at the time was in financial difficulties, and his brother came to his rescue. The Master finds—and the evidence, especially the letters of the plaintiff, are conclusive upon the point—that the assignment of the shares was made to secure the general indebtedness of the plaintiff to his brother.

The assignments of the several share certificates Nos. 1 to 13 were written by the hand of the plaintiff. Though absolute in form, the assignments were intended as security only. New certificates, Nos. 21, 22, and 23, were filled in by the plaintiff himself on 26th July, 1895, and duly signed and sealed, declaring D. J. McCarthy to be the owner of the 63 shares. They were not removed from the book in which they were bound up with the forms of unissued certificates and receipt counterfoils for certificates issued and delivered. On the counterfoils of certificates 21, 22, and 23, D. J. McCarthy formally acknowledged receiving them from the company. He was thereupon entered in the books of the company as their owner. All that was done up to this time had been done with the concurrence and even co-operation of the plaintiff. Nothing that happened was inconsistent in any way with what had been arranged between the parties. The form of the transfers, absolute in its terms, rendered necessary the entry on the books of the company of the transferee as the owner of the shares.

He understood and the plaintiff recognised, as appears by the plaintiff's letter, written months afterwards, on 18th November, 1895, that the shares were held as security and not absolutely. Again on 16th March, 1896, the plaintiff writes to his brother (exhibit No. 116) referring to the shares as "held as security for advances made by you." The shares have never been parted with by the defendant, who is ready