

under no obligation to see that his purchaser was registered as the owner of them; that he had done nothing to prevent the transfer to his purchaser being registered, and was not responsible for the action of the appellants in preventing the registration of the transfer.

It seems to us, however, that it is plain upon the evidence that the sale to the plaintiff's purchaser was not complete; that it was a term of the sale that the vendor should be in possession of two 500 share certificates, so that the purchaser might have them in that form; and, if that be so, it follows, as a matter of course, that the plaintiff is entitled to recover, because, upon applying for the certificates, the delivery of which was essential to the completion of the contract, he was unable to obtain them.

I am inclined to think—it is not necessary for the decision of this case to decide—that, even if the evidence on this point were not as clear as it is, the brokers dealing in good faith with a highly speculative class of shares, such as these mining shares undoubtedly were, if, acting in good faith, they formed the opinion that it was so doubtful whether the purchase could be forced upon the purchaser that they ought not to insist on completion at the risk of the principal having to embark in litigation with the purchaser, the plaintiff would nevertheless be entitled to recover. It would be a most unfair thing to him, dealing with a stock of that character, to put him in such a position that he would have to take that risk, or, if he did not, lose his right to recover from the appellants.

No injustice is done to these appellants. If the contention of Mr. Clark is right, and the purchase was completed, the purchasers from the plaintiff would have a right of action for the wrong done in preventing the transfer of these shares to him.

Appeal dismissed.

FALCONBRIDGE, C.J.

DECEMBER 6TH, 1907.

WEEKLY COURT.

RE EAGLE.

*Will—Construction—Devise—Estate — Fee Simple Subject to be Divested on Death of Devisee Leaving Children — Rule in Shelley's Case.*

Motion by the administrator of the estate of Mary Jane Hards (née McWhirr), deceased, for an order declaring the