

7. That if defendant should not pay on the day, or within 5 days from the dates mentioned for payment, all sums theretofore paid by defendant should be absolutely forfeited to plaintiff, and all interest of plaintiff under the agreement should thereupon cease.

This seems to me a perfectly clear and intelligible agreement, although possibly it may not be such an agreement as plaintiff intended to make. . . . It means that defendant had the right to pay for plaintiff's shares and get them, but not to get them unless he paid in full for them. If the stock was good and continued to be good, plaintiff was not hurt. It continued to stand in plaintiff's name upon the books of the company; he could vote upon it, defendant could not. The stock could not be transferred except upon production and surrender of the certificates, and defendant could not get these certificates to produce and surrender until he paid in full. . . . At the expiration of 5 days after default in making payments which defendant had the right to make, he forfeited to plaintiff all the money he had paid; and then all right to purchase the stock, all interest of defendant under the agreement, ceased. How could that be so, if plaintiff still had the right to collect from defendant in full for the stock at the price named?

The terms of this agreement completely negative the existence of any implied covenant on the part of defendant to pay in any event the full \$60 and interest for each share of the stock; and these terms prevent there being read into the agreement what has been called in an agreement for sale an express covenant on the part of the purchaser to pay. Defendant is not a purchaser in fact. This interpretation is consistent with the whole agreement, and explains why the language is that plaintiff gives to defendant the right to pay. . . . If plaintiff's contention is correct, one would naturally look for a clause allowing defendant upon payment of a large part of the purchase price to get a part of the certificates, so that he could use or sell the shares withdrawn.

The agreement must be looked at as a whole: see *Montreal Street R. W. Co. v. City of Montreal*, [1906] A. C. 100.

It may be that plaintiff did not get enough in getting \$500 as a consideration for his covenant not to go into business. Evidence of that and of other things not within the 4 corners of the agreement itself, was excluded. Putting myself, as far