But there is the fact that during this period of nearly three years the plaintiff had been going on paying the defendants moneys under a misapprehension, owing to their concealment of the fact that these shares were pledged. I do not for one moment mean to say that there was any improper concealment or any intention to conceal from him the fact. It is most likely that the defendants thought that they were entitled to pledge these 90 shares to the Bank of Hamilton in the way in which they did.

It may be, probably it is, the fact that there is an understanding among brokers and bankers such that they were entitled to get the 10 shares out at any time by paying $1,500 in respect of them, but they have offered no evidence of that sort. The absence of such evidence was observed upon in Conmee v. Securities Holding Co., 38 S. C. R. 601, as to the custom in Philadelphia, but it was offered in Clark v. Baillie as to the custom in Toronto; and it has not been proved here, and, being only a matter of custom or agreement and not of law, I cannot take judicial notice of it.

I simply say that, in order to make it clear that I am casting no imputation whatever upon the good faith of the defendants in relation to the matter. I am simply dealing with it on the evidence as I find it, and on the inferences I feel I am bound to draw from the evidence.

Then it stands in this way, that they had in fact converted that stock to their own use on the 2nd December. The plaintiff, when he entered into the transaction, supposed that he was pledging his money and his credit as against the stock, not as against a liability of the defendants to make good the stock. That principle was pointed out by Mr. Justice Davies and Mr. Justice Duff in the Supreme Court in Conmee v. Securities Holding Co. The plaintiff having $260 odd in the defendants' hands here, and being liable for $1,500 more, was entitled, in the very nature of things, to expect that the shares did exist in such a shape that he could get them by paying that $1,500. It is no answer, I think, for the defendants to say, "Oh, we were responsible during all that time to get those shares for him." That was not the bargain between them.

Then, that not being the bargain, and the defendants not having the shares in respect to which they were making demands for margin, the plaintiff paid those moneys under a misapprehension, a mistake of fact, and a mistake of fact arising from the defendants' non-disclosure of the conversion of the stock.

That being so, the plaintiff, in my judgment, is entitled to a return of those moneys so paid after the conversion of the stock.