

tion, is a registered by-law in these words: "No transfer of any share or shares shall be held valid unless the same shall have been in the first place offered to and refused by the company, and in all cases the share or shares of every stockholder shall be liable to the company for all debts in any wise incurred by such stockholders to the company, all transfers to be subscribed by the parties in the company's books.

Viewing this, as we must view it, in connection with the third plea, the plea in effect contains an allegation that this by-law was complied with by the defendant in relation to the shares sold. But that allegation is not proved. It is observable that the vendor of these shares alone could perform the condition of this by-law, on the performance of which the validity of a transfer is by it made to depend, for the offer to and refusal by the company must precede the transfer. To the plaintiff's independent claim on the money counts there is, beside the special plea above considered, no plea except "never indebted." Of that, of course, the sole effect would be a defensive allegation that the defendant never received from the plaintiff \$550,—a fact which is not in controversy. It was, therefore, indispensable for the defendant to prove his third plea.

But there is a view of this case which, independently of all that has been observed, would make it our duty to send it back for re-trial. The defendant is proved to have been at the time of the transaction in question a stock-broker, and to have acted as such, and with this very plaintiff, in matters of business unconnected with the present case. In this state of things it was, of course, that plaintiff reposed confidence in the defendant; and it was most probable, if not a matter of course, that when the subject of negotiation between the parties was, as in the case before us, the purchase of stock, the plaintiff, unless in the most distinct and precise manner informed to the contrary by the defendant, should consider that he was dealing with the latter in his character of agent, and not as a private individual. Now after a careful examination of the evidence given by the parties, I am of opinion that by the defendant's own shewing he did not